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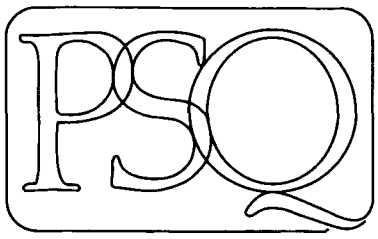

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From the Editor:

In this issue . . .

GARY C. JACOBSON analyzes the 2006 midterm election as a referendum on the performance of President Bush, the war in Iraq, and the Republican Congress. He argues that the Democrats won control of Congress by nationalizing the election and exploiting widespread public discontent with the Republican regime to overcome the Republicans' formidable structural advantage in present-day electoral politics.

DANIEL BYMAN challenges the view that proliferation and terrorism are similar problems and that the policies to combat them necessarily operate in harmony. Policymakers concerned about nuclear terrorism should focus on helping potential leakers improve security and on guarding against the rise of hostile ideological states.

MICHAEL C. DORF describes the interactions among the three branches of the federal government in addressing the detention and trial of captives in the war in Afghanistan and the broader "war on terror." He explains that the Supreme Court's repeated rejections of the Bush administration's sweeping assertions of wartime authority have erected few insurmountable obstacles to administration policy. Instead, the Court has required the administration to seek authority from Congress, which in turn has shown little appetite for reining in the President.

HUGH HECLO argues that both secular and religious political activists have found it advantageous to demonize each other by using the idea of America as a Christian nation. Citizens can gain a more mature understanding of the relationship between Christianity and American nationhood by considering different domains of variation in America's alleged Christian-ness.

JON A. SHIELDS unearths a surprising relationship between the Christian right and democratic ideals. Although Christian right leaders are strident in the context of mobilization, they also encourage their activists to embrace civility and public reason in the public square. This fact highlights a deeper tension between the democratic ideals of participation and deliberation.

DAVID A. REZVANI examines the controversy surrounding Puerto Rico's constitutional status and rejects both of the traditional views on this issue. Puerto Rico is neither an American colony nor are its powers legally safeguarded by its 1952 "compact" with the United States. Instead, mirroring the historic British dominions, unwritten constitutional rules defend Puerto Rico's constitutional status, making it into a partially sovereign polity known as a "federacy."

DEMETRIOS JAMES CARALEY

Arthur M. Schlesinger, Jr. 1917–2007

The Academy of Political Science and *Political Science Quarterly* mourn the death of the eminent political and social historian Arthur M. Schlesinger, Jr. He was a faithful member of the Academy for over forty-five years and a hardworking member of the *Quarterly*'s Editorial Board for over thirty years. The whole world of scholarship will miss him as we most certainly will. —D.J.C.

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Referendum: The 2006 Midterm Congressional Elections

GARY C. JACOBSON

Collectively, the American electorate treated the 2006 midterm congressional elections as a classic referendum on the performance of the president and his party. Most voters held negative views of both George W. Bush and his Republican partisans in Congress, and as a consequence, Democrats won majority control of both chambers for the first time in twelve years. Table 1 summarizes the results. Democrats picked up thirty seats in the House, fifteen more than necessary to take over, winning a majority one seat larger than that held by the Republicans in the previous Congress. They also gained six Senate seats, all taken from Republican incumbents, to win a one-seat majority in the upper house. Remarkably, Democrats lost not a single seat in either body, the first election in U.S. history in which a party retained all of its congressional seats.

According to the political science literature, party fortunes in midterm elections are broadly shaped by three basic factors: the number of seats the president's party already holds, how well the economy is performing, and how the public views the president's performance in office.[1] Although there is no consensus on the relative importance of each condition or the way they ultimately influence voters' decisions, in combination, they do predict midterm partisan seat swings with considerable accuracy. This was true in 2006 as well; for example, a simple model employing standard measures of these variables predicts a twenty-six seat gain for Democrats in the House.[2] Because the economy was doing quite well by customary measures, the model attributes the Republican losses to the President's extraordinarily low standing with the public. Bush's 38 per-

[1] For a discussion of this literature and a full set of citations, see Gary C. Jacobson, *The Politics of Congressional Elections*, 6th ed. (New York: Longman, 2006), 154–170.

[2] The model is in ibid, p. 156, updated to include 2004; with Bush's approval at 38 percent and real per capita income up 3.0 percent between the third quarter of 2005 and the third quarter of 2006, and

GARY C. JACOBSON is professor of political science at the University of California, San Diego. He is the author of several books and numerous articles on congressional elections. His most recent book is *A Divider, Not a Uniter: George W. Bush and the American People.*

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TABLE 1

Membership Changes in the House and Senate in the 2006 Elections

	Republicans	*Democrats*	*Independents*
House of Representatives			
At the time of the 2006 election	232	202	1
Elected in 2006	202	233	
Incumbents reelected	188	191	
Incumbents defeated	22	0	
Open seats retained	14	12	
Open seats lost	8	0	
Senate			
At the time of the 2006 election	55	44	1[a]
After the 2006 election	49	50	1
Incumbents reelected	8	15	
Incumbents defeated	6	0	
Open seats retained	1	2	1
Open seats lost	0	0	

[a]Bernard Sanders, an independent who caucuses with the Democrats, replaced Senator James Jeffords, a one-time Republican, who in 2001, became an independent, caucusing with the Democrats, in one of Vermont's Senate seats.

cent approval rating in the Gallup Poll taken just before the election was the lowest for any president since Harry Truman in 1950; had his rating been as high as it had been in 2002 (63 percent approving), and with the strong economy, the model predicts that the parties would have broken about even.

All such models need to be taken with a large grain of salt, however, because their predictions have wide error bands that would include almost any plausible result (in this model, one standard deviation of the predicted swing covers plus or minus sixteen seats—that is, for 2006, a Democratic gain of from thirteen to thirty-five seats). Without question, a strongly pro-Democratic national tide was running in 2006, but it was by no means certain that it would be sufficient to overcome the formidable structural advantage the Republicans now enjoy in congressional elections and deliver control of Congress to the Democrats. The Republicans' advantage derives from the fact that their usual voters are distributed more efficiently across districts and states than are Democratic voters. As an illustration, consider that the Democrat, Al Gore, won the national popular vote over George W. Bush by about 540,000 of the 105 million votes cast in 2000, yet the distribution of the 2000 presidential vote across current House districts yields 240 districts in which Bush won more votes than Gore but only 195 in which Gore outpolled Bush.[3] Similarly, Bush won thirty states to Gore's twenty despite losing the popular vote nationally.

with Republicans' seat "exposure" at 2.3 percent, the point prediction is that Democrats pick up twenty-six seats. Other models predict modest to considerably larger Democratic gains.

[3] The principal reason for this Republican advantage is demographic: Democrats win a disproportionate share of minority and other urban voters, who tend to be concentrated in districts with

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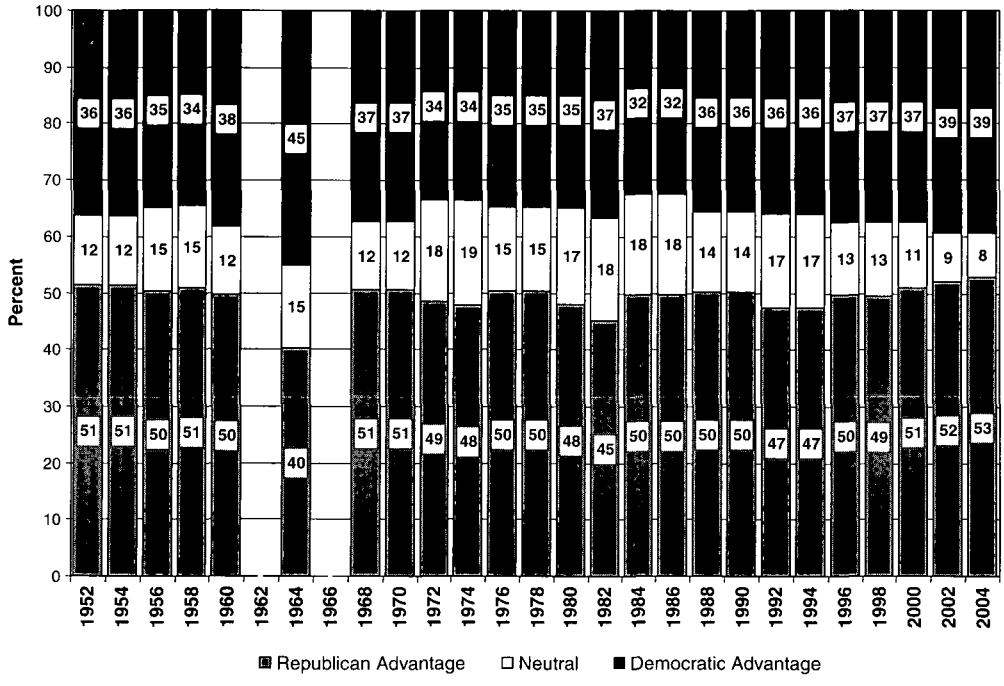
FIGURE 1
District Partisan Advantage, 1952–2004



Source: Compiled by author.

The Republicans' structural advantage is nothing new. As Figure 1 shows, except after the 1964 election, a notably larger proportion of House districts have leaned Republican than have leaned Democratic (partisan leaning defined here as having the district vote for the Party's presidential candidate at least two percentage points above the national average in the concurrent or most recent presidential election).[4] But changes in electoral behavior over the past thirty years, particularly the growing partisan consistency of presidential and congressional voting, has made the advantage far more significant. In past decades, Democrats were able to win a substantial share of these Republican-leaning seats, as high as 44 percent in the 1970s (Figure 2). Their ability to win such seats has fallen sharply since the 1980s, and this is the main reason it was not a foregone conclusion that Democrats would win the House in 2006. Republicans

lopsided Democratic majorities. But successful Republican gerrymanders in Florida, Michigan, Ohio, Pennsylvania, and, after 2002, Texas did enhanced the Party's advantage, increasing the number of Bush-majority districts by 12, from 228 to 240. See Gary C. Jacobson, "Polarized Politics and the 2004 Congressional and Presidential Elections," *Political Science Quarterly* 120 (Summer 2005): 201–203.

[4] The substantive point is unchanged if the standard is five rather than two percentage points; entries are missing for 1962 and 1966 because redistricting altered too many to allow a reliable estimate.

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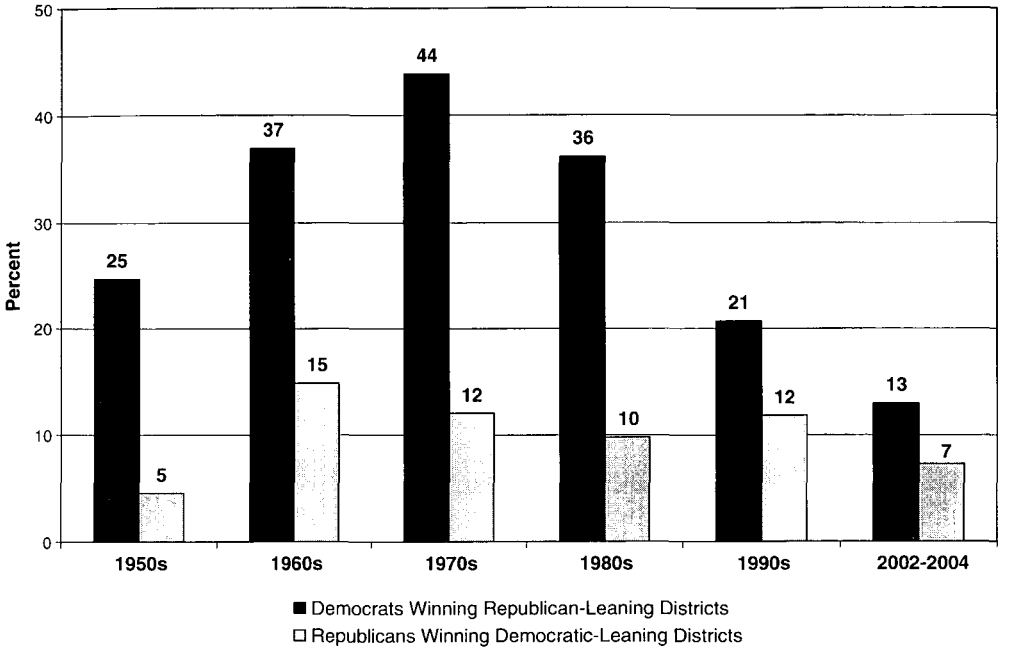
FIGURE 2
Winning against the Partisan Grain, by Decade



Note: Leaning districts are defined as those in which the district-level presidential vote was at least two percentage points higher than the national average for that election.

have never done particularly well in Democratic territory and remain less successful than Democrats in this regard; but this is not a problem for them, because their structural advantage would deliver comfortable Republican House majorities even if they won only Republican-leaning districts.[5] A comparable analysis shows that similar trends also apply to states as electoral units.[6]

To understand what Democrats were up against in 2006, it is instructive to compare their opportunities to those available to the Republicans in 1994, the year the GOP gained fifty-six House seats and eight Senate seats to win full control of Congress for the first time in more than four decades. Using the district-level presidential vote to estimate the underlying district partisanship as in Figure 2, I calculated that in 1994, Democrats defended sixty-five districts that leaned Republican (that is, the Republican presidential candidate had run at least 2 percentage points better than his national average in the district in 1992)

[5] Democrats have also done worse in the dwindling number of evenly balanced districts. From the 1950s through the 1980s, they won 66 percent of these districts; since 1992, they have won 53 percent.

[6] Gary C. Jacobson, "Competition in U.S. Congressional Elections" in Michael P. McDonald and John Samples, eds., *The Marketplace of Democracy* (Washington DC: The Brookings Institution, 2006), 46–50.

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and another forty-nine districts that could be classified as neutral between the parties (districts where the presidential vote was within two percentage points of average). Thus, at least in the abstract, Republicans had 114 likely Democratic targets; they won forty-seven of these seats, comprising 83 percent of their fifty-six seat gain that year. In 2006, Republicans defended only thirteen seats in Democratic-leaning districts and another twenty in neutral districts for a total of only thirty-three ostensibly vulnerable targets. Democrats won twelve of these seats; the remaining eighteen they gained had to be won on Republican turf.

The configuration of Senate contests also offered more opportunities to Republicans in 1994 than to Democrats in 2006. In 1994, twenty-two of the thirty-five seats to be contested were held by Democrats, and retirements had left nine of them open; Republicans took six of the open seats and defeated two incumbents to gain their eight seats. In 2006, Republicans defended fifteen seats, only one of which was open. Moreover, only three were in states won by the Democratic presidential candidate in either 2000 or 2004. Democrats won two of these three "blue" states (Pennsylvania and Rhode Island), but their other four takeovers occurred in "red" states, and all six were achieved by defeating sitting Republicans. A national political tide was surging at least as strongly for the Democrats in 2006 as it had been for the Republicans in 1994, but the Republicans were defending higher ground, and so the total damage they suffered was not as extensive.

Sources of the Democratic Tide

The primary source of the pro-Democratic tide in 2006 was public unhappiness with the Iraq War and its originator, George W. Bush. Figure 3 displays the trends in support for the war and approval of Bush's job performance through October 2006.[7] The two trends track one another closely and move in similar ways in response to events in Iraq. Cross-sectional analyses also find a close relationship between opinions on Bush and the war; respondents give consistent responses—approve of Bush and support the war, or disapprove of Bush and oppose the war—an average of 84 percent of the time in polls spanning this period.[8] These opinions are far more tightly linked than they were for Bush's predecessors in comparable situations—Harry Truman with the Korean War

[7] Bush job approval is the Lowess-smoothed summary of responses to 771 polls conducted by the Gallup, CBS News/*New York Times*, *Los Angeles Times*, NBC/*Wall Street Journal*, ABC/*Washington Post*, Quinnipiac, *Newsweek*, *Time*, CNN, Bloomberg, Associated Press, and Pew Center for the People and Press polls reported at http://www.pollingreport.com. Support for the Iraq War is the Lowess-smoothed summary of 579 polls asking a wide variety of questions (more than forty different wordings in all) assessing opinions on the war from the same survey sources as well as Fox News, Knowledge Networks, and Zogby polls.

[8] In secondary analysis of 107 of these polls, mean consistency was 83.8 percent with a standard deviation of 2.9 percent.

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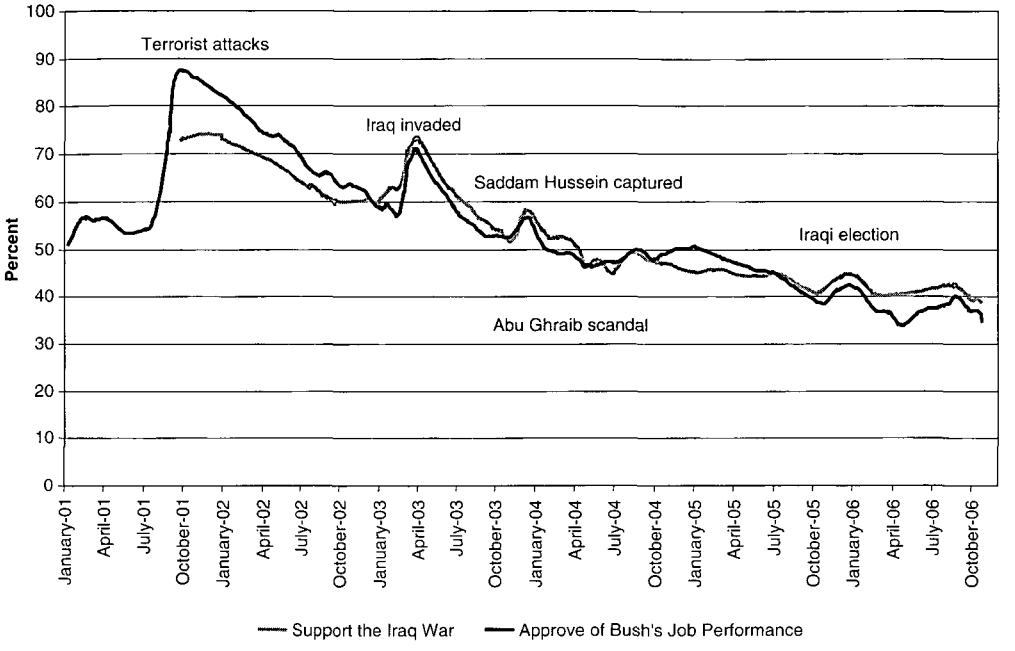
FIGURE 3
Approval of George W. Bush and Support for the War in Iraq



Source: See footnote 7.

(60 percent consistent), and Lyndon Johnson with the Vietnam War (64 percent consistent).[9] In any single survey, the direction of causality is ambiguous—prior attitudes toward Bush shape reactions to the war, assessments of the war shape evaluations of Bush—but there seems little doubt that growing disillusionment with the war has dragged down Bush's approval ratings over time.

As Figure 3 indicates, public disillusionment with the war was more gradual than precipitous over the two years following Bush's reelection, falling about 10 percentage points over this period. Responses to other questions concerning the war and its justifications also reveal a gradual erosion of optimism and support, but with a more pronounced downturn just before the 2006 election. Figure 4, which displays the trend in beliefs that the war was going well, serves as an example. Belief that the war in Iraq has made Americans safer from terrorist attacks shows a similar trajectory and by election day had fallen below 40 percent. Perhaps more ominous for Republicans, growing pessimism about the war and its consequences was shared by their own partisans and

[9] See Gary C. Jacobson, "Public Opinion and the War in Iraq" (paper presented at the annual meeting of the American Political Science Association, Philadelphia, PA, 30 August–3 September 2006), 25.

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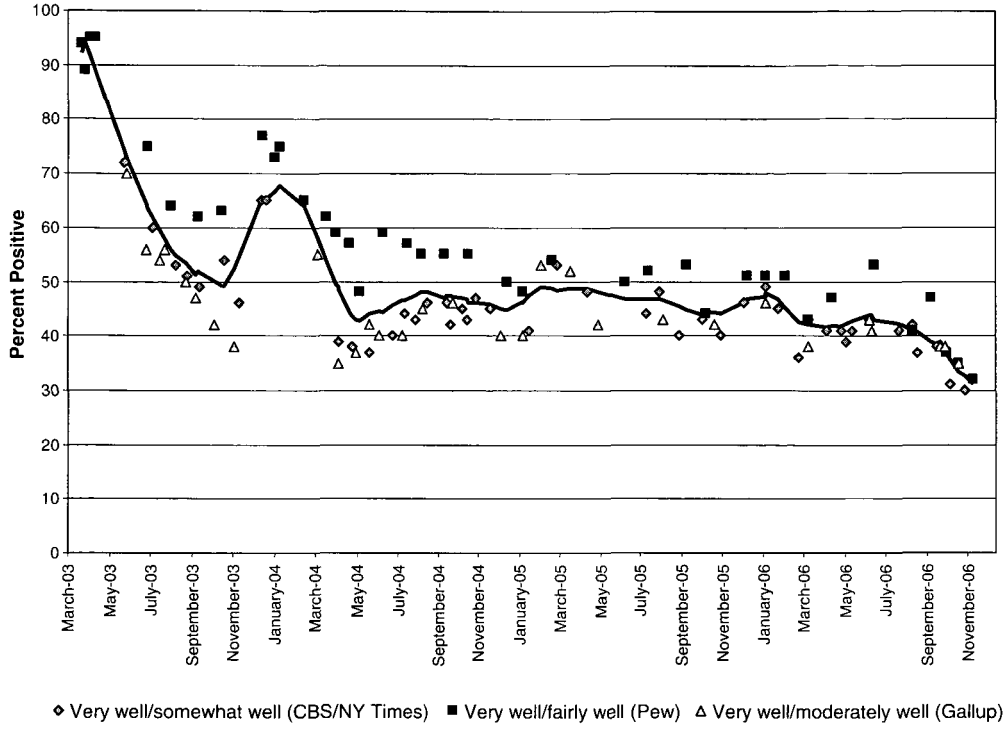
FIGURE 4
How Well is the War in Iraq Going?



Sources: CBS News/*New York Times*, Pew Research Center for the People and the Press, and Gallup polls, accessed at http://pollingreport.com/iraq.htm, 16 November 2006.

political independents as well as Democrats (Figure 5), although the partisan gap on these questions remains very large, with Republicans typically on the order of 45 percentage points more optimistic than Democrats.[10]

The distribution of responses to virtually all the diverse questions regarding the Iraq War places self-identified independents considerably closer, on average, to Democrats than to Republicans.[11] The same holds for evaluations of the President, with important consequences for voting behavior in 2006, discussed below. As Figure 6 makes clear, partisan divisions on evaluations of Bush's performance continued to be huge during his second term; indeed, by this measure, Bush is by a wide margin the most divisive president since modern opinion surveys began asking the approval question more than seventy years

[10] See Gary C. Jacobson, *A Divider, Not a Uniter: George W. Bush and the American People* (New York: Pearson Longman, 2007), 224–232.

[11] The independent category includes those who, when asked, say they lean toward one of the parties, because data on partisan leaners are not consistently available in the surveys analyzed here.

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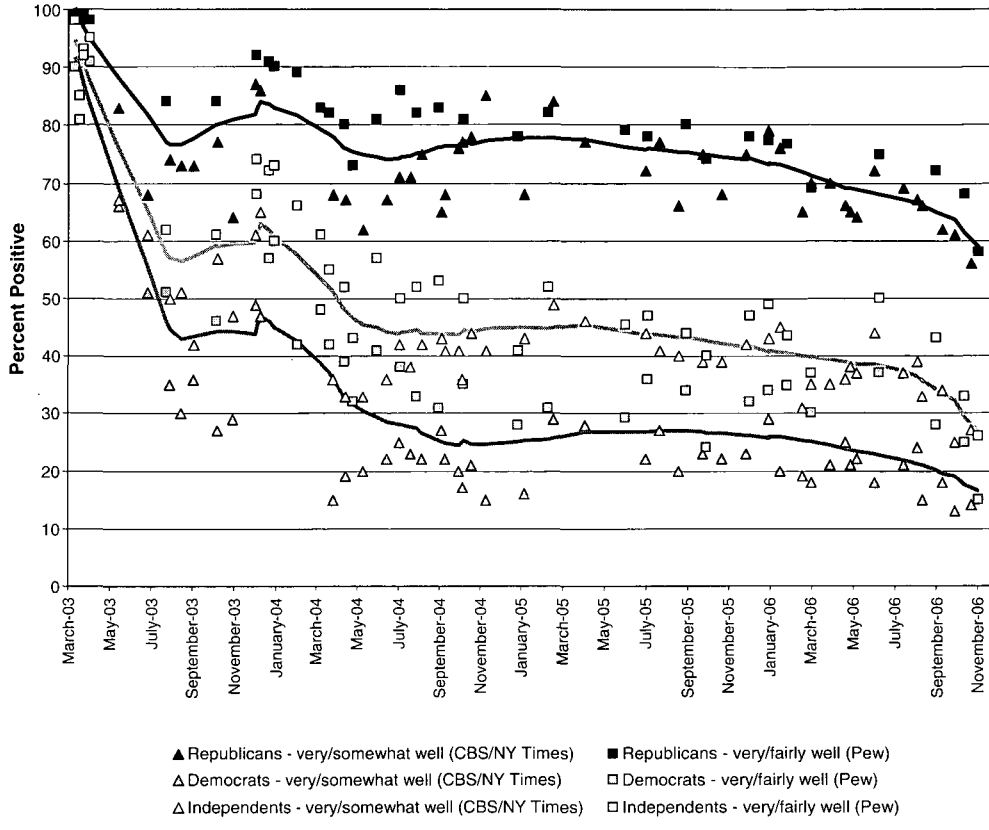
FIGURE 5
Evaluations of How Well the War in Iraq is Going, by Party



ago.[12] Although he lost points among ordinary Republicans between his reelection in 2004 and the midterm, four of five still approved of his performance, and he was on an upswing with his partisan base as the election approached. Meanwhile, approval among Democrats had fallen to single digits, with trends among both sets of partisans, then, pointing to another election featuring very high levels of party-line voting. The most consequential trend, however, appears among independents, whose approval ratings of the President fell about 15 points between the 2004 and 2006 elections.

The sharp partisan divisions provoked by the President made it harder for Republican campaigns to exploit what was, by the usual measures, a robust economy. To an extraordinary degree, partisanship now colors Americans' perceptions of almost anything that can be associated with Bush, including national economic conditions. Republicans reacted to improving economic in-

[12] Jacobson, *Divider*, 6–7.

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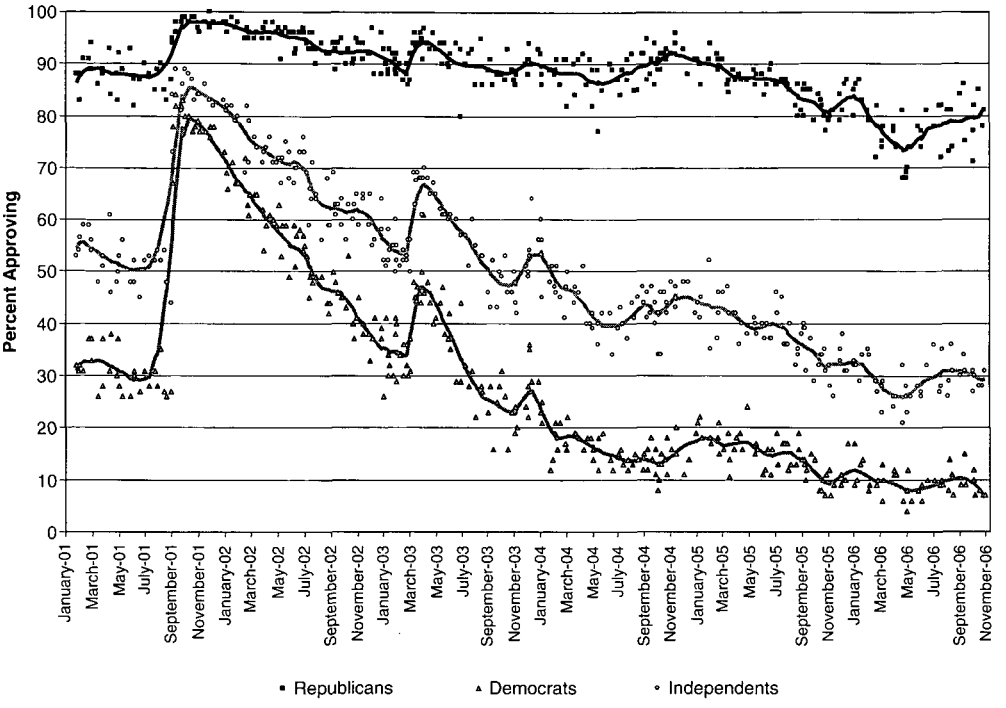
FIGURE 6
Approval of George W. Bush's Job Performance, 2001–2006, by Party Identification



Sources: 323 CBS News/*New York Times* and Gallup polls.

dicators by upgrading their assessments, but Democrats and independents have been comparatively slow to acknowledge the good news (Figure 7). Part of the reason may be that the benefits of recent economic growth have gone disproportionately to the affluent and have yet to be felt by ordinary working people, but whatever the reasons, the data suggest that extolling the economy was not a particularly effective Republican message for attracting even those Democrats and independents who thought the economy was a more important electoral concern than Iraq.

A second major source of the pro-Democratic national tide was public discontent with the Republican-controlled Congress. In surveys taken during the month preceding the election, Congress' approval ratings averaged 27 percent, lower than Bush's and only a few points above where they had been when Republicans had swept the Democrats out in 1994.[13] Various scandals, some involving members' financial relations with convicted lobbyist Jack Abramoff, others regarding improper personal behavior, not only gave the Democrats

[13] See http://www.pollingreport.com/CongJob.htm, accessed 6 November 2006.

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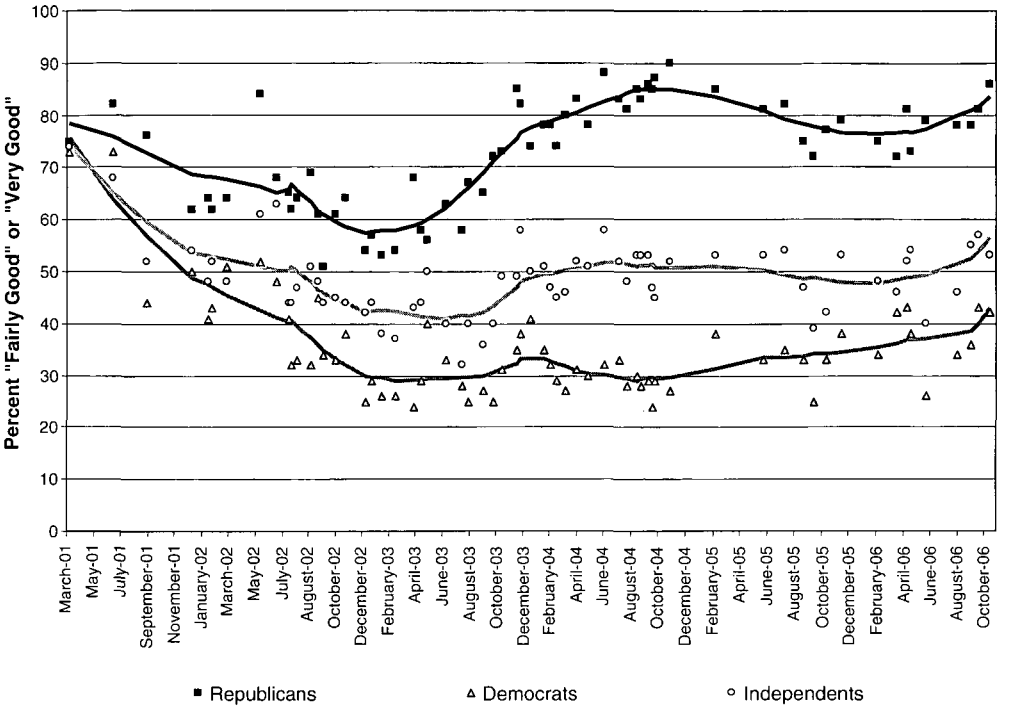
FIGURE 7
Rating of the Economy, 2001–2006



Source: Sixty-five CBS News/*New York Times* polls.

one of their main campaign themes—vote to reject the Republicans' "culture of corruption"—but also gave them a chance to pick up seats that would not have been available absent badly tainted Republican incumbents.[14] The public also took a dim view of the Congress' legislative productivity.[15] Negative views of the Congress, the President, and the war left two-thirds of the electorate dissatisfied with the way things were going in the United States and believing that the country had gotten off on the wrong track.[16] If the Democrats could not achieve a national victory under these conditions, it is hard to imagine when they ever would.

[14] These include the seats formerly held by Tom Delay, Bob Ney, and Mark Foley, all of whom had resigned under a cloud, as well as those defended by Don Sherwood, Curt Weldon, and, in the Senate, by Conrad Burns.

[15] "Public Disillusionment with Congress at Record Levels," survey report, Pew Research Center for the People and the Press, 20 April 2006, accessed at http://people-press.org/reports/display.php3?ReportID=275, 17 November 2006.

[16] See the numerous poll results on these questions, accessed at http://www.pollingreport.com/right.htm, 6 November 2006.

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STRATEGIC POLITICIANS IN 2006

Favorable national conditions do not, however, automatically deliver victories to the favored party. Elections are still fought at the local level, and the quality of candidates and the vigor of their campaigns are crucial determinants of outcomes. Voters rarely toss out incumbents unless they are offered a qualified replacement; national issues need effective local sponsors to have their full electoral impact. Thus, the effects of national political forces are mediated by the strategic decisions of potential candidates and by the people who control campaign resources. Unless the favored party's leaders and activists anticipate a helpful national tide and prepare to take advantage of it, its effects will be muted.[17]

The Democrats certainly had reason to believe early on that 2006 would be a good year for them, allowing plenty of time to mobilize candidates and resources. Responses to the generic House vote question—asking respondents which party's candidate they would vote for if the election were held today, without specifying any candidate's name—typically gave them a wide lead well before the election year, a good five points ahead of where they had been at comparable periods heading into other recent elections (Figure 8). Even discounting the fact that generic polls always tend to exaggerate the Democrats' support, the lead was large enough by the end of 2005 to conclude that majority status was within reach.

This atmosphere helped with recruitment of candidates and fund raising, and Rahm Emanuel, the chair of the Democratic Congressional Campaign Committee, and his counterpart in the Senate, Charles Schumer, did an effective job on both fronts. The proportion of Democratic House challengers with experience in elective office—one measure of candidate quality—was only average for recent decades (17 percent), but, as always, experienced candidates were much more likely to be found in open seats and potentially competitive districts. Emanuel's main innovation was to encourage and support candidacies of moderate to conservative Democrats in districts where mainstream national Democrats would have faced poor prospects.

More important, though, was that the campaigns of a large proportion of Democratic candidates showing any promise at all were amply financed through some combination of contributions and independent spending by party or outside organizations. Final campaign finance data are not yet available, but preliminary reports show that the campaigns of at least forty-seven of the fifty-five Democrats pursuing Republican-held House seats who ended up with at least 46 percent of the major-party vote were backed by more than $1 million in contributions and party spending. Of the remaining eight, two won anyway. For

[17] Gary C. Jacobson and Samuel Kernell, *Strategy and Choice in Congressional Elections* (New Haven, CT: Yale University Press, 1981), 19–34; Gary C. Jacobson, "Strategic Politicians and the Dynamics of House Elections, 1946-86," *American Political Science Review* 83 (September 1989): 773–793.

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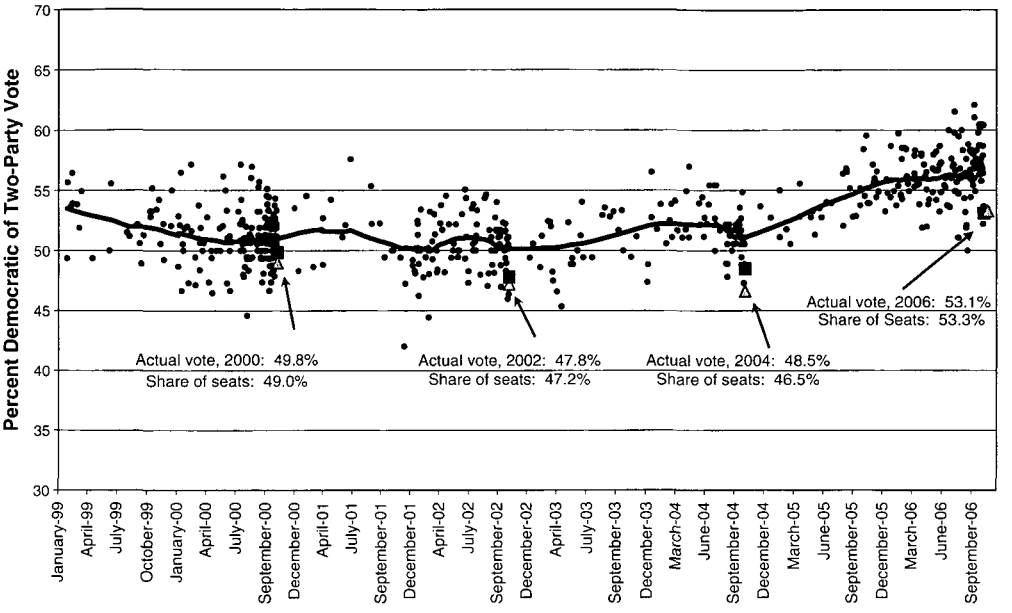
FIGURE 8
Generic House Vote Intention, 1999–2006 (Registered/Likely Voters)



Source: Compiled by author, largely from data reported at http://www.pollingreport.com, various dates.

only four or five races do the financial data suggest that party officials overlooked a promising candidate who might have won with a more generous infusion of cash, an impressive record, considering that the number of seats estimated to be in play by election handicappers kept growing as the election drew nearer.[18] Republicans also invested massively to defend their vulnerable House seats—preliminary data indicate that the losing Republican incumbents on average outspent their Democratic challengers by more than 50 percent[19]—and it is conceivable that their efforts saved some incumbents (eleven Democrats won more than 49 percent of the major-party vote but fell short of a majority). In general, however, the outcomes of campaigns abundantly funded by both sides are not determined by who spends more, but by voters' responses to the candidates and messages the money is spent to promote.[20]

[18] The five were Larry Kissel (NC 8, 49.9%), Victoria Wulsin (OH 2, 49.4%), Sharon Reiner (MI 7, 48.4%), Nancy Ann Skinner (MI 9, 47.3%), and Larry Grant (ID 1, 47.2%). By Charlie Cook's calculations, the number of Republican seats in play (defined as toss-up or leaning Democratic) grew from 11 in May to 42 in October; see *The Cook Political Report* accessed at http://www.cookpolitical.com/races/house/default.php, 6 November 2006.

[19] "House Winners Raised a Record Average of $1.1 Million," press release, Campaign Finance Institute, 8 November 2006 accessed at http://www.cfinst.org/pr/110806b.html, 27 November 2006.

[20] Jacobson, *Politics of Congressional Elections*, 41–47.

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Democrats also fielded strong challenges to Republican Senators wherever prospects looked at all promising,[21] and the campaign of every Democrat (and Republican) in any of the Senate races where the outcome was at all in doubt was lavishly funded through a combination of contributions, party spending, and independent spending campaigns. Preliminary data show that the amounts put into the campaigns of competitive Democrats ranged from more than $8 million in the low-population states of Montana and Rhode Island to more than $20 million (Missouri); their Republican opponents were at least as well funded. No Senate candidate in even the most marginally competitive race could reasonably complain about a shortage of campaign resources.

In short, anticipating a favorable national tide, Democratic operatives, candidates, and contributors positioned themselves to exploit it, an essential condition for actually realizing the anticipated gains.

Campaign Strategies

The national climate of opinion gave the Democrats their main campaign strategies: Attack Republicans for loyally supporting the President and his misconceived war and for sharing a "culture of corruption" in Congress, emphasizing the latter especially in states and districts where the incumbent's personal record gave the charge local resonance. Frame the choice in national terms, urging voters to use their franchise to express their unhappiness with the Republican regime and, most particularly, its leader. Aside from criticizing the war, emphasize making health care more accessible, raising the minimum wage, and protecting Social Security—issue domains in which majorities consistently trust Democrats more than Republicans.

Republican candidates faced a more complicated set of options. One, standard for the circumstances, was to try to distance themselves from their party and President (for example, by criticizing aspects of the war or calling for Defense Secretary Donald Rumsfeld's resignation), instead emphasizing their independence, devotion to local interests, and record of delivering valued projects and services to constituents. The public mood, as well as their Democratic opponents, worked against this strategy, and it was no more successful than it had been for Democratic incumbents facing the public's wrath in 1994.[22]

An alternative strategy, promoted by the Bush administration and the President's political advisor, Karl Rove, was to replace the war in Iraq with terrorism and homeland security as the dominant electoral focus. The President obviously had a huge stake in the election, considering its implications for his

[21] The list of Democratic challengers in the seven tightest races includes three candidates who had held statewide offices (governor, attorney general, auditor), two U.S. Representatives, a president of the state senate, and a former secretary of the navy. The Democrats who retained open seats for the party were also experienced candidates: the attorney general for Minnesota's largest county and two U.S. Representatives (counting Bernie Sanders, an independent who caucuses with the Democrats).

[22] Jacobson, *Politics of Congressional Elections*, 176–182.

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remaining legislative agenda as well as the prospect that his administration could spend its final two years fending off hostile congressional probes of its decisions and actions. Thus, during the summer, the administration orchestrated a coordinated, no-holds-barred counterattack against Democratic critics of Bush and the Iraq War. Taking advantage of the public's attention to events commemorating the fifth anniversary of the September 11 attacks, Bush and his allies sought not only to reinforce the idea that the war in Iraq and the war on terrorism were one and the same, but also to elevate the conflict to the equivalent of World War II and the Cold War. The President drew cautionary parallels between Osama bin Laden's anti-U.S. fulminations and Lenin's *What Is To Be Done* and Hitler's *Mein Kampf*,[23] claiming the mantle of Franklin Roosevelt and Harry Truman as presidents who stood fast in the face of global threats.[24] In addresses delivered around the same time, Vice President Dick Cheney and Secretary Rumsfeld also variously quoted Roosevelt, took the fight against Nazism and fascism as precedent, and, more to the political point, charged that critics of the administration's policies believed that "vicious extremists can be appeased"[25] and that "retreat from Iraq would satisfy the appetite of the terrorists and get them to leave us alone"[26]

The central message was that Islamic jihadists were as profound a threat to the existence of the United States as the Axis powers and the Soviet Union had once been. Democrats, by questioning the wisdom of the Iraq War or the administration's conduct of the fight against terrorism more generally, revealed themselves as appeasers who were blind to the terrorist threat and, if given control of Congress, would put the security of the United States at grave risk. As Ken Mehlman, chairman of the Republican National Committee put it, "The president's effort to keep Americans safe will grind to a halt with Democrats in control ...."[27] Later in the campaign, Bush told a Republican rally that "however they put it, the Democrat approach in Iraq comes down to this: the terrorists win and American loses."[28] The campaign was, in short, a

[23] George W. Bush, "President Discusses the Global War on Terror," transcript of speech delivered 6 September 2006, accessed at http://www.whitehouse.gov/news/releases/2006/09/print/20060905-4.html, 10 November 2006.

[24] George W. Bush, "President's Address to the Nation," transcript of speech delivered 9 September 2006, accessed at http://www.whitehouse.gov/news/releases/2006/09/20060911-3.html, 10 November 2006.

[25] Donald Rumsfeld, (address to the 88th annual American Legion national convention, Salt Lake City, Utah, 29 August 2006), accessed at http://www.defenselink.mil/Speeches/Speech.aspx?SpeechID=1033, 10 November 2006.

[26] Richard B. Cheney, "Vice President's Remarks at the Veterans of Foreign Wars National Convention," (speech, Veterans of Foreign Wars national convention, Reno, Nevada, 28 August 2006), accessed at http://www.whitehouse.gov/news/releases/2006/08/20060828-4.html, 10 November 2006.

[27] Quoted in Dan Froomkin, "Off Message," accessed at http://www.washingtonpost.com/wp-dyn/content/linkset/2005/04/11/LI2005041100879.html, 18 September 2006.

[28] George W. Bush, "Remarks by the President at Georgia Victory 2006 Rally," Statesboro, GA, 30 October 2006, accessed at http://www.whitehouse.gov/news/releases/2006/10/20061030-4.html, 20 November 2006.

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concerted effort to use the specter of jihadist terrorism to frighten enough voters into voting Republican in 2006 to keep the Party in control of the House and Senate, replicating at the congressional level Bush's successful strategy against John Kerry in 2004.[29]

The administration's campaign included a tactical component in the form of legislative proposals, submitted to Congress in September, that would put terrorist suspects outside the protection of the Geneva Conventions, legalize (unspecified) coercive methods of interrogation, authorize military tribunals to try terrorist suspects without the usual constitutional protections (including habeas corpus), and permit the interception of telephone and e-mail messages between American citizens and contacts abroad without a court order. This agenda was designed to put Democrats on the spot; any sensitivity to the human rights or civil liberties issues raised by these proposals, indeed, any opposition to giving the President unchecked powers to deal with anyone suspected of links to terrorists as he saw fit, invited the charge of being soft on terrorists. Those Democrats who balked at this extraordinary delegation of power to the executive were attacked for being opposed to "giving President Bush the tools he needs to protect our country" and unwilling to "bring justice before the eyes of the children and widows of September 11."[30] Democrats countered that the abrogation of fundamental rights for persons accused of terrorism was un-American, invited international condemnation, and was not needed to combat and prosecute terrorists. The Republicans had succeeded in cornering them, however, and fear of being labeled soft on terrorism or willing to "coddle" the perpetrators of September 11 was enough to induce thirty-four House and twelve Senate Democrats to support the President's position on final passage of the bill authorizing the tribunals and procedures for handling suspected terrorists.

If anyone doubted the terrorism agenda's electoral motivation, Republican leaders' comments after passage laid them to rest. Senate Majority Leader Bill Frist: "Do [voters] want to be voting for a party that does unabashedly say, 'We're going to have victory in this war on terrorism,' or a party that says, 'We've got to surrender?' House Speaker Dennis Hastert: Democrats "were so bent on protecting criminals ... they're not allowing us to prosecute these people. The 130 most treacherous people probably in the world, and they want to ... release them out into the public eventually."[31] (The Democrats who advocated surrender to terrorists or releasing them from custody naturally went unnamed, as they were wholly imaginary.)

As an attempt to change the subject and to refocus public attention from what was happening in Iraq to the domestic terrorist threat, the administration's

[29] Jacobson, *Divider*, 196–197.

[30] The first is a quote from John Boehner, Republican majority leader; the second is from James Sensenbrenner, Jr., chair of the Judiciary Committee; see Charles Babington, "House Approves Bill on Detainees," *The Washington Post*, 28 September 2006.

[31] Doyle McManus, "Detainee Bill Boosts the GOP," *Los Angeles Times*, 30 September 2006.

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campaign largely failed. Although polling data suggested a small upturn in Republican prospects in late September, whatever traction the campaign had achieved was soon lost in damaging revelations about the conduct and consequences of the Iraq War[32] and a revival of the scandal issue with the exposure and resignation of a Republican congressman whose inappropriate attentions to male House pages had been known to Republican leaders for months if not years.[33] Moreover, surveys turned up little evidence that ordinary citizens were swayed by the administration's rhetoric; it appears, at most, to have simply reinforced existing (highly partisan) views. In doing so, it may nonetheless have helped the Republican cause by reviving support among Republican voters who had been showing signs of disillusionment with the war and thus the President (see Figure 6). Democrats and independents were a much harder sell; most of them had long since stopped believing what Bush and his allies were saying about the war and its justifications.[34] The greatest obstacle to the administration's attempt to change the subject, however, was the steady stream of bad news coming out of Iraq; during October, American battle deaths exceeded 100 for the first time since January 2005, and sectarian violence produced the highest Iraqi monthly civilian death toll recorded to that date.[35]

The Republicans' other notable tack, taking a hard-line stance on immigration through an enforcement-only policy and voting to build a 700-mile fence along the Mexican border, was also ineffective in attracting voters beyond the Party's conservative base. It cost the Party's candidates support among Latino voters, the fastest growing segment of the electorate, and was not all that popular with other groups, either.[36] Tellingly, two Republican House candidates in Arizona, one a six-term incumbent, the other seeking a Republican-held open seat, who made sealing the border the centerpiece of their campaigns ended up losing. Republicans also revived their traditional charges that Democrats in power would raise taxes, overspend, and stunt economic growth, but tax and spending issues were not high on the list of public concerns in 2006.

As the election approached, the Republicans' last hope was to outmobilize the Democrats, as they had in 2002 and 2004, with a carefully prepared

[32] A classified report from April summarizing the consensus of sixteen U.S. intelligence-gathering agencies, leaked in late September, concluded that the terrorist threat was growing rather than shrinking and that the Iraq War was increasing rather than diminishing the number of terrorists. See "Declassified Key Judgments of the National Intelligence Estimate. Trends in Global Terrorism: Implications for the United States," April 2006, accessed at http://media.washingtonpost.com/wp-srv/nation/documents/Declassified_NIE_Key_Judgments_092606.pdf, 29 September 2006. Shortly thereafter, Bob Woodward published *State of Denial* (New York: Simon & Schuster, 2006), the title declaring the book's thesis.

[33] Jackie Calmes, "Scandal May Further Alienate Republican Base," *The Wall Street Journal*, 3 October 2006.

[34] Jacobson, "Public Opinion and the War in Iraq," 24–25.

[35] Nancy Trejos, "UN: Iraqi Civilian Deaths at New High," *The Washington Post*, 22 November 2004.

[36] See the collection of survey data at http://www.pollingreport.com/immigration.htm, accessed 18 November 2006.

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get-out-the-vote operation micro-targeting conservative Republicans and other voters whose tastes or other characteristics supposedly opened them to Republican appeals. The experience of the earlier elections, and Karl Rove's confident prediction that Republicans would retain their majorities, based, he said, on his own internal analyses that ignored the polls,[37] kept Democrats nervous until the end, but the pro-Democratic national tide proved too strong to be contained by any of the Republicans' organizational countermeasures.

The Nationalized Election

The Democrats' efforts to nationalize the election and to make it a referendum on President Bush and the Republican Congress largely succeeded. As Figure 9 shows, more than a third of the electorate said that their vote for Congress was a vote against Bush, a noticeably larger proportion than for any of his three predecessors at midterm, including Bill Clinton in 1994. The reversal from 2002, when an unusually high proportion of voters said their vote would be an expression of *support* for President Bush, is especially striking. The proportion of voters who said control of Congress would be a factor in their vote was also considerably higher than usual (Figure 10). Democrats were especially inclined to take this view (more than 70 percent did so); they were also more enthusiastic about voting than Republicans.[38] Negative opinions of presidential performance tend to motivate voters more strongly than positive opinions,[39] and among Democrats, strongly negative views of Bush were the norm in 2006. The extent to which hostility to the President and the Iraq War animated ordinary Democrats was underlined by the fate of Senator Joseph Lieberman, Al Gore's running mate in 2000 but a staunch Bush ally in the Iraq War, who lost the Connecticut Democratic primary to an anti-war candidate and had to depend on Republican votes to win reelection as an independent (he continues to caucus with the Democrats).[40]

[37] "Karl Rove on Why He Believes the Republicans Will Keep the House and Senate Despite Polls to the Contrary," interview broadcast by NPR's *All Things Considered*, 24 October 2006, accessed at http://www.npr.org/about/press/061024_rove.html, 24 November 2006.

[38] "Republicans Cut Democratic Lead in Campaign's Final Days," research report, Pew Research Center for the People and Press, 6 November 2006, accessed at http://people-press.org/reports/display.php3?ReportID=295, 27 November 2006.

[39] Samuel Kernell, "Presidential Popularity and Negative Voting: An Alternative Explanation of the Midterm Congressional Decline of the President's Party," *American Political Science Review* 71 (March 1977): 44–66.

[40] According to the exit poll, Lieberman won the votes of 70 percent of the Republicans, 33 percent of the Democrats, and 54 percent of the independents; only 21 percent of Republicans voted for the Republican candidate, suggesting an extraordinarily high level of strategic voting on their part. Connecticut exit poll results are available at http://www.cnn.com/ELECTION/2006/pages/results/states/CT/S/01/epolls.0.html, accessed 28 November 2006.

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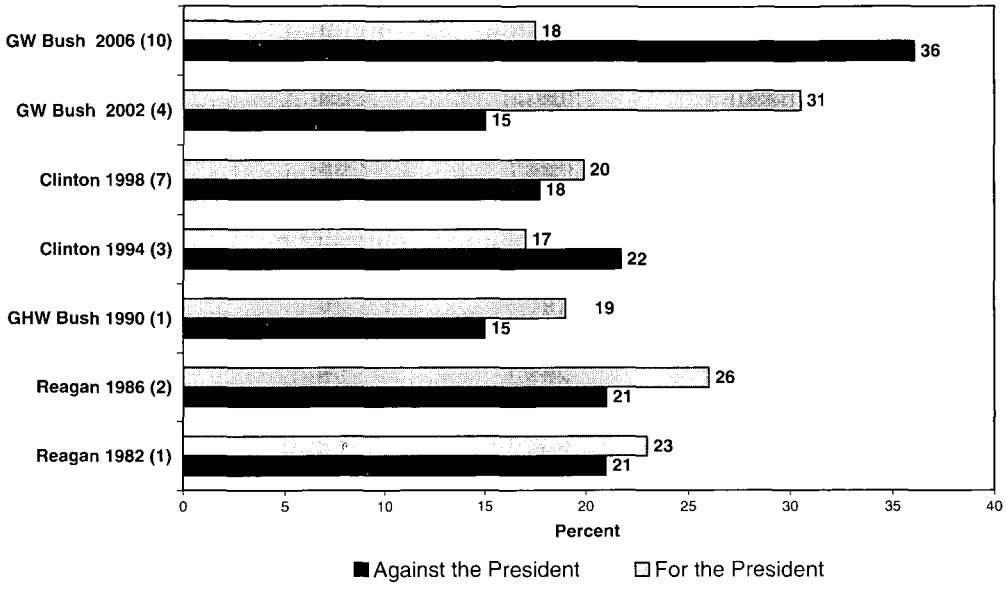
FIGURE 9
Is Your Vote For Congress a Vote For or Against the President?



Note: The number of polls averaged for each year is in parentheses.
Source: Pew Research Center for the People and the Press, "October 2006 Survey on Electoral Competition: Final Topline," 17–22 October 2006, accessed at http://people-press.org/reports/questionnaires/293.pdf, 15 November 2006.

Voting Behavior in 2006

Results of the major academic election surveys are not yet available for analysis, but pre-election surveys and the election day exit poll provide a consistent account of the broad shifts in voting behavior that contributed to the Democrats' victory in 2006. As in other recent elections, partisans were very loyal to their House candidates (Table 2). But whereas in 2002 and 2004, Republicans were a few points more loyal than were Democrats, the opposite was true in 2006. Moreover, according to the exit polls, the partisan composition of the electorate was slightly more favorable to the Democrats in 2006 than it had been in 2004. However, the largest single contribution to the Democrats' gains, according to these data, came from independents.[41] Voters classifying themselves as independents had favored Republican candidates in 2002 and had given the Democrats a modest edge in 2004; in 2006, they broke decisively for

[41] Independents who lean toward one of the parties—and who are usually as loyal as weak partisans—have to be treated as independents in this analysis, because these surveys do not consistently distinguish partisan leaners from pure independents.

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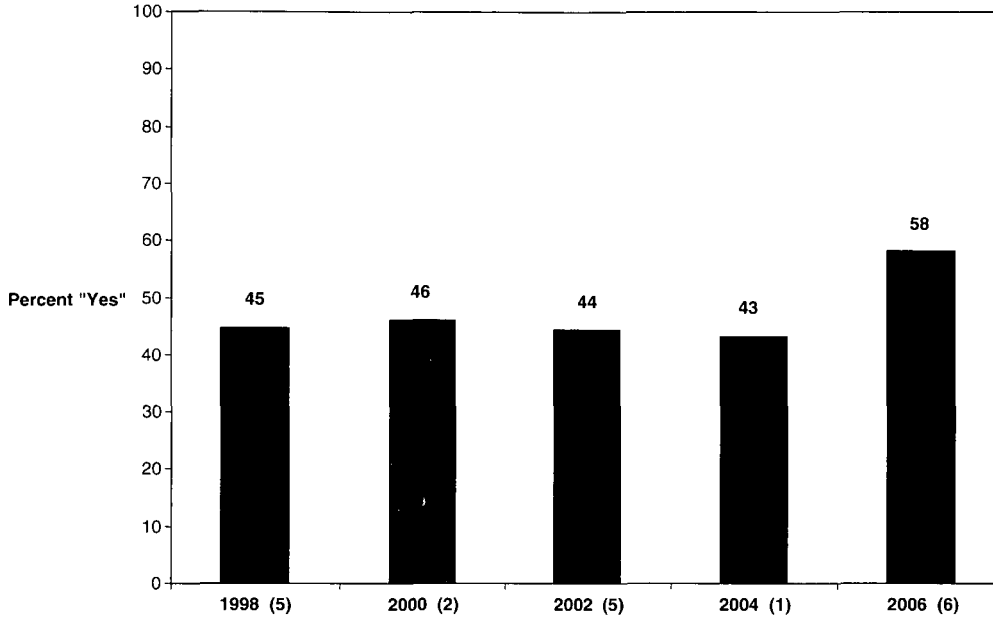
FIGURE 10
Is the Issue of Which Party Controls Congress a Factor in Your Vote?



Note: The number of polls averaged for each year is in parentheses.
Source: See Figure 9.

the Democrats. Calculations based on 2004 and 2006 exit poll data indicate that nearly half the total vote swing to Democratic House candidates between these elections was supplied by independent voters, although they comprise only about a quarter of the electorate.

Statewide exit polls indicate that independent voters were also the key to Democratic victories over Republican Senate incumbents in several of the "red" states. The distribution of partisans and the incidence of party-line voting reported in Montana, Missouri, and Virginia suggest that the Democrat would not have won without a clear majority of independent voters (Table 3). It is noteworthy that Harold Ford, who won but a bare majority of the independent vote in Tennessee, was the only Democrat in a hotly contested Senate race who came up short. Ohio evidently would have gone to the Democrat even without the lopsided support of independents. The same is true of Pennsylvania, but the Democratic victory in the other "blue" state, Rhode Island, was a product of the Party's two-to-one advantage in party identifiers and their desertion of incumbent Republican Lincoln Chafee; he won 46 percent of the Democrats' votes in 2000 but only 15 percent in 2006. A similar, if less-pronounced partisan advantage, ensured that a Democrat retained the only Democratic Senate seat considered in play on election day (held by Robert Menendez in New Jersey).

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TABLE 2

Partisan and Independent Voters in U.S. House Elections, 2002–2006 (Percentages)

	Loyal Republicans	*Loyal Democrats*	*Independents Voting Democratic*
2002 Pre-election polls (5)[a]	95	94	46
2004 Pre-election polls (3)	96	94	55
2004 Exit poll	93	91	52
	(37)[b]	(37)	(24)
2006 Pre-election polls (5)	94	97	61
2006 Exit poll	92	93	59
	(36)	(38)	(26)

Sources: Pre-election polls from ABC News/*Washington Post*, CBS News/*New York Times*, Gallup, *Newsweek*, and Pew Research Center for the People and Press polls taken in late October and early November of the election year; ABC and Pew polls did not ask the House vote question in 2004. Exit poll data are from the National Election Poll exit polls; data include major-party voters only.

[a]Number of polls averaged.

[b]Percent of respondents in partisan category in the exit polls.

A compelling explanation for the Democrats' lead among independents in 2006 is provided by the data in Figure 6 showing that the distribution of independents' opinions on Bush's performance had grown much more similar to that of Democrats than of Republicans. In surveys taken during the month before the election, Bush's average approval rating among independents of 29 percent was 50 points below his average rating among Republicans (79 percent) and only 20 points above his rating among Democrats (9 percent). Similarly, independents' average level of support for the Iraq War during this period, at 36 percent, was more than twice as far below that of Republicans (73 percent) as it was above that of Democrats (19 percent).[42] The relationship between these opinions and voters' preferences in 2006 is illustrated in Figure 11. Views on Bush and the Iraq War affected the preferences of people in all three categories but made a much larger difference for independents than for partisans. Thus, the predominantly negative opinions on Bush and the war among independent voters produced a decisive Democratic advantage in this segment of the electorate.

Aggregate Voting Patterns

Although a strong pro-Democratic national tide was running in 2006, it was not by itself sufficient to deliver control of Congress to the Democrats. The Democrats' share of the total House vote nationally increased by nearly five percentage points over 2004, and the vote swing to Democrats in districts contested in both 2004 and 2006 averaged a little over five points. But only five

[42] See Gary C. Jacobson, *A Divider Not a Uniter: George W. Bush and the American People*, updated with a postscript for 2006 (New York: Pearson Longman, forthcoming, 2008).

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TABLE 3

Partisan and Independent Voting in Hotly Contested Senate Elections, 2006 (Percentages)

	Loyal Republicans	*Loyal Democrats*	*Independents Voting Democratic*
Montana	89	91	63
Burns (R) vs. Tester (D)	(39)[a]	(32)	(29)
Missouri	91	92	54
Talent (R) vs. McCaskill (D)	(39)	(37)	(25)
Ohio	86	91	65
DeWine (R) vs. Brown (D)	(37)	(40)	(23)
Virginia	93	94	56
Allen (R) vs. Webb (D)	(39)	(36)	(26)
Tennessee	94	93	51
Corker (R) vs. Ford, Jr. (D)	(38)	(34)	(28)
Pennsylvania	86	93	72
Santorum (R) vs. Casey (D)	(38)	(43)	(19)
Rhode Island	94	84	45
Chaffee (R) vs. Whitehouse (D)	(18)	(38)	(44)
New Jersey	90	92	48
Kean, Jr. (R) vs. Menendez (D)	(28)	(41)	(31)

Source: VNS exit polls available at http://www.cnn.com/ELECTION/2006/, accessed 10 November 2006; data include major-party voters only.

[a]Percent of respondents in partisan category.

of the thirty Democratic pickups would have been achieved with a five-point increase in the Democratic vote over 2004; nineteen required swings of ten or more points to put the Democrat above 50 percent. The actual swing in the districts Democrats took from Republicans averaged fourteen points, exceeding ten points in twenty-three of them. These results underline the crucial contribution of the Democrats' strategic deployment of campaign resources—candidates, money, personnel—to their success in turning a favorable partisan tide into the victories that produced their House majority. The tide by itself was not enough; in most districts, it had to be effectively exploited by Democratic candidates at the district level to have an impact.[43] Nonetheless, a couple of low-spending, relatively obscure Democrats did win unexpected victories, not so much because local voters had changed their opinions of the Republican incumbent but because so many former supporters thought it more important this time to vote their opposition to the Republican regime and its leader.[44]

The Democrats' average share of the total vote cast for senator was also up a little more than five points over 2000, the last time the same set of seats was contested. Their Senate majority depended on local Democratic swings larger than the national average in two states (Ohio and Rhode Island), but their other takeovers came in states where the Republican's vote margin in 2000

[43] Jacobson, *Politics of Congressional Elections*, 199–200.

[44] This category would include Carol Shea-Porter, who defeated Joseph Bradley III in New Hampshire, and David Loebsack, who defeated James Leach in Iowa.

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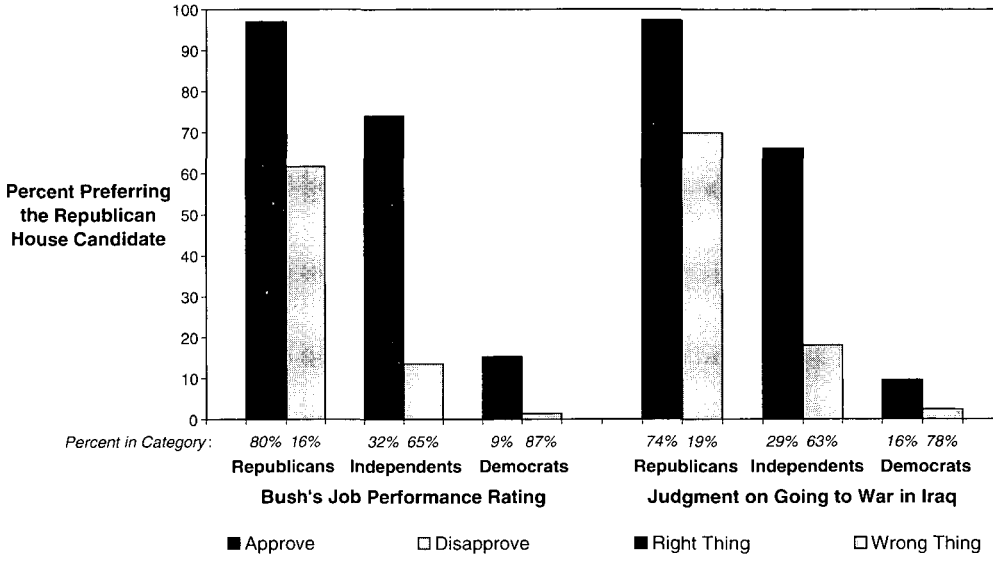
FIGURE 11

Opinions on George W. Bush, the Iraq War, and the Candidate Preference in 2006



Source: SRBI/*Time Magazine* Poll #2006-3970, 1–3 November 2006.

had been narrow enough to be overcome with no more than a five-point swing. Four of the defeated Republicans had themselves entered the Senate by defeating incumbents, underlining the basic competitiveness of these states. The Senate results repeat the pattern evident in several other elections (notably 1980, 1982, 1986, and 1994) in which one party swept the lion's share of the hotly contested races.[45]

CONSEQUENCES

Historical parallels to the 2006 midterm congressional elections can be found in the elections of 1950 and 1966 as well as 1994. In all three of these elections, the economy was in decent shape but voters were unhappy with the president, in the first two cases, in part because of increasingly unpopular wars (Korea and Vietnam, respectively), and the president's party suffered.[46] None of these elections, however, produced a durable change in the party balance in the electorate, and, according to the data now available, there is little reason to believe 2006 will be any different. The new Democratic majorities are far from secure. Democrats did pick up nine seats in Democratic-leaning districts and

[45] Jacobson, *Politics of Congressional Elections*, 200–204.

[46] Truman's Democrats lost a net twenty-eight House seats and five Senate seats in 1950; Johnson's Democrats lost forty-seven House seats and four Senate seats in 1966.

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four in neutral districts (as defined for Figure 1), but eighteen were won in Republican-leaning territory, including ten districts that had given Bush at least 55 percent of the vote in 2000 and 2004. Even with the advantages of incumbency, retaining their House majority will be no simple task, for the Republicans' formidable structural advantage remains securely in place.

The election did disprove one familiar canard: that partisan gerrymandering has virtually eliminated competitive House districts. At sixty, the number of House seats won with less than 55 percent of the major-party vote in 2006 was the highest since 1948. The election also confirmed that incumbents' electoral safety is contingent rather than automatic; fourteen of the twenty-two losing Republican incumbents had coasted in with more than 60 percent of the vote in 2004.[47] But it is also true that it required a powerful partisan tide to produce such results. Competition should also be comparatively widespread and intense in 2008, particularly if, following the usual pattern, the pro-Democratic tide recedes and Republicans see a chance to win back the Congress.

The Democrats' prospects for keeping their majorities in 2008 will of course depend to a considerable extent on what these majorities do in the 110th Congress. As in 1994, the election was far more a rejection of the ins than an endorsement of the outs (the mythology regarding the contribution of their "Contract with America" to the Republican triumph in 1994 notwithstanding[48]). If the election conveyed any mandate, it was for a change of direction in Iraq, greater honesty in Congress, and, perhaps, more congressional attention to matters affecting the lives of ordinary people, such as, for example, access to medical care. None of these will be easy to achieve. Although most voters are unhappy with the course of the Iraq War, most also oppose immediate withdrawal, and congressional Democrats have not found it easy to articulate a plausible strategy for ending American involvement without leaving behind a bloody civil war and a vast humanitarian disaster. President Bush will continue to have the final say in the war's conduct, and having declared Iraq the main front in the war on terrorism, it is difficult to imagine that he will disengage short of something that could be portrayed as victory, for doing so would be to concede failure on his presidency's defining mission. Ethics reform in Congress is never easy, and it is unlikely that Democrats will swear off the earmarking that has come to symbolize the problem, for it has become part of the pork-barrel culture that is encoded in the DNA of the institution.[49] A Democratic Congress may be able to boost the minimum wage, but making health care universal and affordable or shoring up Social Security and Medicare for future retirees are far

[47] Thomas Mann, *Unsafe at Any Margin: Interpreting Congressional Elections* (Washington DC: American Enterprise Institute, 1980); Jacobson, *Politics of Congressional Elections*, 48–49.

[48] Gary C. Jacobson, "The 1994 House Elections in Perspective," *Political Science Quarterly* 111 (Summer 1996): 209.

[49] Diana Evans, *Greasing the Wheels: Using Pork Barrel Projects to Build Majority Coalitions in Congress* (New York: Cambridge University Press, 2004).

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more difficult tasks. And any legislation that cannot win significant Republican backing will be subject to filibuster in the Senate and Bush's vetoes.

Republican losses occurred disproportionately among their few remaining moderates, moving the Party's center of gravity to the right for the 110th Congress. The incoming Democrats are ideologically diverse and will most likely increase the Party's overall ideological dispersion in both chambers, underlining the challenge leaders will face trying to unify the Party behind a common legislative agenda. The consensus of postelection punditry that Democrats will succeed politically only if they pursue popular centrist policies, resisting any impulse toward a hard left turn, seems well founded. Among the mass public, self-described conservatives outnumber liberals by a wide margin, and moderates outnumber both. Elementary arithmetic makes it plain that Democrats will have to retain the support of the centrist, swing voters who were essential to their victory in 2006 if they are to have any chance of repeating it in 2008.

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Do Counterproliferation and Counterterrorism Go Together?

DANIEL BYMAN

Americans heard a rare note of harmony during the otherwise acrimonious 2004 debate between President George W. Bush and Senator John Kerry. When moderator Jim Lehrer asked the candidates to identify "the single most serious threat to the national security of the United States," both stressed the danger of nuclear weapons falling into the hands of terrorists.[1]

Given this sentiment, it is not surprising that the President's foreign policy is designed around the nexus of counterterrorism and counterproliferation. The result is the "Bush doctrine," a foreign policy that stresses countering this nexus by transforming hostile tyrannies into friendly democracies through coercion and even regime change. This transformation can be done in a variety of ways, but the Bush doctrine stresses that the United States should act alone if an international consensus cannot be achieved.[2] Democrats have noisily criticized the President for embracing unilateralism too easily, but that is a critique of modalities rather than objectives. They, too, regularly beat the drum of alarm with regard to nuclear weapons and terrorism.

Nuclear proliferation and terrorism, however, are not twin horrors and do not result in a single set of policy guidelines. The problems of when nation states proliferate and when terrorist groups attack are often quite distinct from the

[1] For a transcript, see "The First Bush–Kerry Presidential Debate." Commission on Presidential Debates, 30 September 2004, accessed at http://www.debates.org/pages/trans2004a.html, 15 January 2007. This essay will focus on the question of terrorist use of nuclear weapons. While terrorist use of chemical or radiological weapons would have a tremendous psychological impact, it would be unlikely to inflict mass casualties. Terrorist use of biological weapons could potentially pose a deadly threat and deserves additional attention.

[2] For a review, see Robert Jervis, "Understanding the Bush Doctrine," *Political Science Quarterly* 118 (Fall 2003): 365–388. For a defense of the Bush Doctrine as the toll of the Iraq war became clear, see Norman Podhoretz, "Is the Bush Doctrine Dead?" *Commentary* 122 (September 2006): 17–31.

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problem of when terrorist groups might gain access to nuclear weapons. In general, proliferators and sponsors of terrorist groups have distinct motivations, and the solution sets for both problems are even more different. When this generic problem is scrutinized with today's terrorist groups and potential nuclear suppliers in mind, the disjuncture becomes far greater. Not only do efforts that join counterterrorism with counterproliferation fail to solve the problems of proliferation and terrorism as they relate to groups like al Qaeda and countries like Pakistan, but aspects of them make the problem worse.[3] Moreover, U.S. policy is often focused on the wrong aspects of this nexus.

Notionally, the proliferation problem with regard to terrorism can be divided into three categories: the deliberate transfer of nuclear weapons or fissile material from a state to a terrorist group; a decision to sell weapons or materials on the black market to terrorists or intermediaries who might provide them to terrorists; or an unwilling diversion in which the weapons or fissile material is stolen or provided by sympathizers without the knowledge or support of the regime.[4] The leakage problem, as I argue below, is the most dangerous with regard to the nuclear terrorism issue and is quite distinct in characteristics and solutions from the broader problems of nuclear proliferation and the spread of terrorism. Similarly, the terrorism problem can be thought of in two ways: as hostile regimes actively backing terrorists (Iran and Hezbullah) and as regimes that allow terrorists to operate on their soil due either to indifference (the United States and the Provisional Irish Republican Army during the 1970s) or incapacity (Afghanistan today and the remnants of the Taliban).

At a general level, going it alone to solve these problems is a mistake, because allies are central to both counterterrorism and counterproliferation. Even beyond the question of unilateralism, coercion attempts can often make the problem of support for terrorism and proliferation worse, strengthening a regime's determination to acquire nuclear weapons or gain friends who can act as a form of deterrence against a militarily superior superpower. Though difficult and costly, regime change can indeed help with proliferation, but the transition to a new government is often exceptionally dangerous for counterterrorism, weakening regime capacity and thus allowing terrorists to flourish.

[3] Valuable works on nuclear proliferation include Ariel Levite, "Never Say Never Again: Nuclear Reversal Revisited," *International Security* 27 (Winter 2002/2003): 59–88; Robert Litwak, "Nonproliferation and the Dilemmas of Regime Change," *Survival* 45 (Winter 2003–2004): 7–32; Robert S. Litwak, *Regime Change: U.S. Strategy through the Prism of 9/11* (Baltimore, MD: Johns Hopkins University Press and Wilson Center Press, 2007); Peter Lavoy, "The Strategic Consequences of Nuclear Proliferation: A Review Essay," *Security Studies* 4 (Summer 1995): 695–753; Richard A. Falkenrath, Robert D. Newman, and Bradley A. Thayer, *America's Achilles' Heel: Nuclear, Biological, and Chemical Terrorism and Covert Attack* (Cambridge, MA: MIT Press, 1998); Scott D. Sagan, "Why Do States Build Nuclear Weapons? Three Models in Search of a Bomb," *International Security* 21 (Winter 1996/97): 54–86.

[4] Other analysts further break this down, distinguishing between theft and deliberate transfers by low-level sympathizers without regime permission. See Charles Ferguson and William Potter, *The Four Faces of Nuclear Terrorism* (New York: Routledge, 2005), 54–61.

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The problems become even more pronounced when the particular threats most prevalent today are examined. Most of the discussion focuses on deliberate transfers to terrorist groups with close ties to supportive governments. Even hostile regimes like Iran and North Korea, however, have shown no intention of transferring nuclear weapons to terrorists, let alone countries like Israel, Russia, China, and India, which, like the United States, are engaged in conflicts with radicals who often resort to terrorism. The bigger danger is that Russia or Pakistan might fail to prevent the sale or diversion of a weapon or fissile material, a problem that regime change or unilateralism would do little to prevent and could worsen.

On terrorism, the greatest threat of nuclear use does not come from Hezbullah, Palestine Islamic Jihad, or other groups that have historically enjoyed close relations with supportive and potentially nuclear-capable states. Indeed, state support often acts to discourage rather than accelerate group demands for nuclear weapons. Rather, the threat of nuclear terrorism comes from al Qaeda and the loose network of Sunni jihadists who look to Osama bin Laden for inspiration, if not always direct support. Since the fall of the Taliban regime in Afghanistan, these jihadists have not had a state sponsor. Indeed, almost every government in the West and in the Muslim world is at war with them. This lack of a haven and worldwide pressure have made it far more difficult for them to develop their own weapons programs or to conduct a sophisticated acquisition and smuggling operation. Nevertheless, they have flourished in countries that tolerate their activities, such as Pakistan, or in states like Yemen, Afghanistan, and Iraq where the government's writ is weak. Here the key is building up government strength rather than weakening governments through coercion and regime change. Moreover, the jihadist phenomenon is so widespread that alienating local regimes through coercive counterproliferation efforts is counterproductive: counterproliferation requires constant police and intelligence cooperation in dozens of countries.

Policymakers concerned about the problem of nuclear terrorism should focus on several areas where there is policy overlap between counterproliferation and counterterrorism and focus on the specific manifestations of this threat. The most important shift would be to recognize that the problem is states that lack the capacity to control their populations and borders rather than hostile aggressors bent on challenging U.S. primacy. Attention should focus on building up countries that might proliferate or allow terrorists to take root despite the wishes of the regime. Ideological states, which emphasize advancement of a set of anti–status quo ideas as opposed to material or power concerns, deserve particular attention. The return of a highly ideological Iran, or the emergence of a regime that cared little for international norms, economic prosperity, strategic risk, or the other basic shapers of the behavior of most regimes could change the equation dramatically with regard to the deliberate transfer of nuclear weapons.

The country that deserves the greatest attention today is Pakistan. Pakistan hosts a large domestic jihadist presence and significant numbers of foreign

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jihadists while possessing a nuclear weapons program that it has demonstrated it does not, or will not, control. The possibility of leakage is more than plausible, and the results could be catastrophic for the region and for the United States. Unfortunately, the United States will have to make trade-offs between working with Pakistan to fight terrorism and its efforts to stop proliferation.

This article first reviews the various challenges inherent in both counterproliferation and counterterrorism, dissecting both in order determine which particular aspects of each problem are the most dangerous. Both the "supply" side of potential proliferators and the "demand" side of potential terrorism customers are considered. With this in mind, it then argues for a set of alternative policies that can better reconcile two worthy foreign policy objectives that at times conflict.

Counterproliferation versus Counterterrorism

Counterproliferation and counterterrorism differ with regard to the focus on policy and the instruments involved.[5] Three aspects deserve particular attention: the number and identity of the states of concern; the states' motivations; and the relevant policy instruments.

Target States

For counterproliferation, the number of states of concern is finite. The nuclear club has nine members (the United States, Russia, China, France, Britain, India, Pakistan, Israel, and now North Korea), and the number of aspirants is for now, at least, rather limited, with Iran being the most eager to join. Several of these countries are extremely close U.S. allies. Moreover, by the standards of recent history, the number of aspirants is low, and for now, at least, does not appear close to be rising dramatically. Many countries have given up their nuclear programs, including Algeria, Australia, Brazil, Egypt, Germany, Japan, Kazakhstan, Libya, South Africa, South Korea, Sweden, Switzerland, Taiwan, and the Ukraine.[6] India's and Pakistan's transformation from covert to overt nuclear powers in 1998 did not spark a new round of acquisition in South Asia. It is possible that the 2006 North Korean nuclear test or Iran's future acquisition of a nuclear bomb could prompt other states to proliferate, but so far, there are few signs of this, despite the progress and open existence of both programs for decades.[7]

[5] For my views on the diplomatic demands of counterterrorism, see Daniel Byman, "Remaking Alliances for the War on Terrorism," *The Journal of Strategic Studies* 29 (October 2006): 767–812.

[6] Scott D. Sagan, "How to Keep the Bomb from Iran," *Foreign Affairs* 85 (September/October 2006): 45–61.

[7] Stephen Peter Rosen posits a plausible postproliferation world and argues that in such a world, many standard assumptions about the use and deterrence of nuclear weapons are at best strained and at worst dangerously naïve. See Stephen Rosen, "After Proliferation," *Foreign Affairs* 85 (September/October 2006): 9–15.

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In counterterrorism, in contrast, the number of states relevant to Sunni jihadist–linked terrorism is vast and goes beyond the narrow U.S. list of state sponsors of terrorism, which includes only two—Iran and Syria—that are highly active. A commonly cited estimate is that al Qaeda has a presence in perhaps fifty countries. These include not only countries in the Arab world, but also Muslim-majority states in Asia and Africa. They also include many states in Europe and elsewhere (notably India) that have large Muslim minority communities. Since September 11, countries that have experienced serious problems with jihadist terrorism include Afghanistan, Algeria, Egypt, France, India, Indonesia, Iraq, Israel, Jordan, Kenya, Kuwait, Libya, Morocco, Pakistan, Russia, Saudi Arabia, Singapore, Spain, Tajikistan, Thailand, Tunisia, the United Kingdom, the United States, Uzbekistan, and Yemen.

Motivations

Motivations for acquiring nuclear weapons or for using terrorism also differ considerably. States seek nuclear weapons to deter other states, to enable conventional military options, to placate a status-hungry and weapons-focused military (or nuclear bureaucracy à la India), for domestic politics, and to assert their place among the top rank of nations, among other reasons.[8] Support for terrorism, however, often stems from a state's weakness. Ties to terrorists can compensate for otherwise weak power projection capabilities and can give a regime a way to influence neighbors when its military and economic capacity is low. In some instances, ideology plays a critical role. Regimes may often back terrorist groups to spread a revolution or otherwise advance a set of ideas, even when the costs are considerable.[9]

In contrast to seeking nuclear weapons, state inaction can be as risky as an active state program when it comes to terrorism.[10] States can passively back terrorists, allowing them access to their territory or to the resources of their population with little interference, even when they do not actively support their goals and activities. The United States, for example, allowed members of the Provisional Irish Republican Army to raise money, acquire weapons, and find

[8] Sagan argues that no single explanation adequately explains the various cases of nuclear acquisition. See Sagan, "Why Do States Build Nuclear Weapons," 54–86. See also Litwak, "Non-proliferation and the Dilemmas of Regime Change," 9; and Sagan, "How to Keep the Bomb from Iran," 47. See also Lavoy, "Strategic Consequences," 739–745.

[9] Daniel Byman, *Deadly Connections: States that Sponsor Terrorism* (New York: Cambridge University Press, 2005). See also Paul R. Pillar, *Terrorism and U.S. Foreign Policy* (Washington DC: The Brookings Institution, 2001), 157–196.

[10] More rarely, but importantly, passive support for nuclear proliferation is also a problem. The United Arab Emirates, for example, allowed the A.Q. Khan network to enjoy a hub for logistics and finance. See "United Arab Emirates/Dubai." Wisconsin Project on Nuclear Arms Control, accessed at http://www.wisconsinproject.org/countryinfo.html#dubai, 15 January 2007 for a number of articles on this subject.

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safe haven on its territory even though the U.S. government did not approve of the terrorist campaign against the United Kingdom.[11]

Motivations for abandoning proliferation or support for terrorism differ even more. Robert Litwak points out that a state's allies' preferences, and norms (such as those embodied in the Nuclear Non-Proliferation Treaty [NPT]), a fear of isolation, a changing security environment, and changes to civil–military relations have led governments to abandon nascent nuclear programs.[12] With regard to terrorism, states often change their level of support for it but are less likely to abandon it altogether. The regularization of ideology often plays a role, with regimes decreasing their support as realpolitik and economic concerns crowd out ideology. The passive support problem, however, involves a different set of concerns. Here, allied pressure, a growing threat from the group that before was seen as focused elsewhere, changes in domestic support for the terrorists' cause, and capacity changes play a major role in turning states against terrorist groups that operate from their soil.[13]

Policy Instruments

The day-to-day of policy is also quite different. Counterterrorism requires an alliance of security services around the globe. Each may have a piece of intelligence that forms part of the entire picture. The U.S. role is to direct and integrate this effort as well as to collect its own information.[14] In addition to collection, each state must actively monitor and disrupt militants on their territory. Such efforts occur daily, and often with little public notice. Where the local government is strong, U.S. policy largely involves managing the relationships of the country's security services. The rub comes when the local government is weak. Here, outside powers must build up security services and, at times, act on their own; both courses are fraught with problems.

Counterproliferation, however, is less of a day-to-day activity. Outside powers may intercept a shipment of parts or even conduct a bombing raid, but this is done perhaps once a month rather than daily.[15] Much of the effort involves forging an effective coalition to influence would-be proliferators, using

[11] Jack Holland, *The American Connection: U.S. Guns, Money, and Influence in Northern Ireland* (Boulder, CO: Robert Reinhart Publishers, 1999), xvii, 28–29; Ed Moloney, *A Secret History of the IRA* (New York: W.W. Norton and Company, 2002), 16, 421.

[12] Litwak, "Non-proliferation and the Dilemmas of Regime Change," 10.

[13] Daniel Byman, "Passive Sponsors of Terrorism," *Survival* 47 (Winter 2005): 117–144.

[14] Paul Pillar, "Intelligence" in Audrey Kurth Cronin and James Ludes, eds., *Attacking Terrorism* (Washington DC: Georgetown University Press, 2003), 128.

[15] The United States claimed two dozen interdictions of WMD and missile-related items under the Proliferation Security Initiative between April 2005 and April 2006. See Robert G. Joseph, U.S. Undersecretary for Arms Control and International Security (2006), "Broadening and Deepening Our Proliferation Security Initiative Cooperation," Warsaw, Poland, 23 June 2006, accessed at http://www.state.gov/t/us/rm/68269.htm, 15 January 2007.

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a mix of diplomatic, military, and economic power. Although having a global alliance is desirable, it is more important to gain the cooperation of key economic and political players—those that have the most coercive leverage.

The military can play a role in both counterproliferation and counterterrorism, but this role is often quite limited. In both cases, the military acts as a deterrent, threatening massive damage if nuclear weapons are used or terrorist acts are committed. Yet the dynamics of credibility are different for each. An adversary's possession of nuclear weapons is (or should be) a sobering fact as military strikes are planned. Indeed, in such cases, the military is most useful either as a deterrent or to strike and change a regime *before* proliferation occurs. For counterterrorism, however, the political will to use military force is often a challenge, as terrorism inflicts few casualties and many states use terrorists as proxies because this gives them some deniability. Military strikes in these cases are often limited, trying to be proportionate. Rarely is there a case like the U.S. removal of the Taliban, where terrorism alone provokes a military drive toward regime change.

Intelligence also comes from different sources. Imagery plays a vital role in counterproliferation, identifying potential research and manufacturing areas as well as determining whether a state is openly weaponizing its programs. For counterterrorism, imagery can play a minor role, but signals and human intelligence are far more important.

As this brief comparison suggests, counterproliferation and counterterrorism have different foci and compete heavily for resources. Should senior policymakers be wooing Indonesia's President Susilo Bambang Yudhoyono in an attempt to encourage a crackdown on a cell in Sulawesi or pressing Japanese Prime Minister Shinzo Abe to cut investment if Iran continues its nuclear program? Ideally, both—but senior officials only have so much time. Should the intelligence community spend more on satellites to monitor North Korea's nuclear program or hire and train more speakers of Pashtu and Dari? Ideally, both—but the U.S. intelligence budget is only so big. The biggest issues come with regard to policy trade-offs in particular countries. Iran and Pakistan both have nuclear programs and are problematic with regard to terrorism: which issue should take priority? (So far, it is the nuclear program with Iran and terrorism with Pakistan.)

Where Counterproliferation Meets Counterterrorism

To understand the overlap between counterproliferation and counterterrorism, it is vital to distinguish the different challenges of counterproliferation. The proliferation problem can be roughly divided into three related but distinct types: providers, sellers, and leakers.

Providers are countries whose government transfers nuclear capabilities to other countries or actors for strategic or other nonfinancial reasons. The Soviet Union, for example, was instrumental in building the Chinese program, while

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France played a major role in building Israel's nuclear effort. In both cases, the providers believed they could assist an ally and discomfit an enemy, and thus improve their own security.[16] Sellers, like providers, deliberately transfer nuclear capabilities, but they do so for financial rather than strategic reasons. Leakers, however, pose a distinct problem. In this case, the regime does not intend to transfer nuclear capabilities, but rather the transfer occurs because it cannot control the nuclear materials or knowledge.

In theory, terrorist groups could be aided by all three types of proliferators. It is easy to spin up a scenario in which Iran would pass on its newfound nuclear capability to Hezbullah or in which a cash-starved North Korea would sell a bomb on the black market to a jihadist group backed by a Saudi billionaire. Leakage, as argued below, is a particular problem, as jihadists, in particular, have many sympathizers and could infiltrate a facility or otherwise gain an opportunity to acquire a weapon with a government's deliberate support.

The Bush administration has largely conceived of the state–terrorism nexus as one of the deliberate transfer of weapons to a terrorist group, but this is probably the least likely danger. In the lead-up to the Iraq war, President Bush declared "Iraq could decide on any given day to provide a biological or chemical weapon to a terrorist group or individual terrorists"—a theme administration officials repeated endlessly as they sought to build public support for the war. Despite the Iraq debacle, this view has not gone away. Norman Podhoretz, defending the Bush administration's policies, describes them as treating terrorists "as the irregular troops of the nation states that harbored and supported them."[17] The Bush administration is not alone: Harvard professor and former Clinton administration official Graham Allison warns that Iran might transfer nuclear weapons to Hezbullah to deter an Israeli attack or that Hezbullah might act on its own against the United States.[18]

The deliberate transfer of nuclear weapons to terrorist groups is unlikely for several reasons. First, many states acquire nuclear weapons to gain a deterrence capability and thus employ them carefully. Because these weapons can be devastating, they would be far more likely to provoke escalation than would support for conventional attacks. State sponsors usually count on it being difficult for low-casualty terrorist attacks to generate enough political will for a military response, but that issue goes away when the nuclear card is played.

[16] Gregory Koblentz, "The Politics of Nuclear Cooperation: Why States Share Nuclear Weapons Technology" (paper presented at the 2005 annual meeting of the American Political Science Association, Washington DC, 1–4 September, 2005); Matthew Kroenig, "The Enemy of My Enemy Is My Customer: Why States Provide Sensitive Nuclear Assistance" (PhD diss., submitted, University of California, Berkeley, 2007).

[17] "Remarks by the President on Iraq" at the Cincinnati Museum Center, 7 October 2002, accessed at http://www.whitehouse.gov/news/releases/2002/10/20021007-8.html, 15 January 2007; Podhoretz, "Is the Bush Doctrine Dead," electronic version, 2.

[18] Graham Allison, *Nuclear Terrorism: The Ultimate Preventable Catastrophe* (New York: Times Books/Henry Holt, 2004), 36.

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Second, states in general fear terrorists acting outside their control. This is a problem with regard to limited conventional attacks, let alone a nuclear one.[19] Few states trust their proxies, and indeed they often gravely weaken movements they support in order to control them. Syria, for example, in theory backed the Palestinian movement but in practice supported myriad Palestinian groups against one another in order to try to maintain control of the movement and threaten leaders who would not kowtow to Damascus.

In addition, nuclear weapons are widely seen as heinous, potentially delegitimating both a group and its state sponsor. Perhaps not surprisingly, no country has ever transferred chemical or biological weapons or agents to its nonstate proxies, despite many having the capability to do so. Nuclear weapons, which are far rarer and far more dangerous, are particularly unlikely to be transferred.

Looking at Iran's relationship with the Lebanese Hezbullah is instructive. Iran and Hezbullah represent perhaps the closest current partnership between a state and a terrorist group—if any state is likely to trust its proxy, it is Iran with Hezbullah.[20] Nevertheless, Iran has been cautious with regard to unconventional weapons systems and has not transferred chemical weapons to even close proxies such as the Lebanese Hezbullah.

Tehran has also sought at least a degree of deniability in its use of terrorism—a reason it often works through the Lebanese Hezbullah to this day when backing terrorists. As Iran expert Kenneth Pollack notes, a chemical or biological attack (to say nothing of a nuclear strike) would lead the victim to respond with full force almost immediately.[21] The use of Hezbullah as a proxy for a nuclear attack would not shield Iran from retaliation.

Trust and plausible deniability are inversely related when it comes to state backing of terrorists. Iran trusts Hezbullah and works openly with it, but this close relationship is far from secret. Iran also has ties to a range of Palestinian and Iraqi groups, but while these relationships are more covert, and thus more deniable, they are not built on trust. Thus, Iran lacks deniability for the groups to which it might transfer more-advanced systems, but lacks the trust that would make it more likely to transfer advanced systems.

Tehran is not likely to change its behavior on this score except in the most extreme circumstances. Traditional terrorist tactics such as assassinations and truck bombs have proven effective for Tehran. Only in the event of a truly grave threat such as an invasion of Iran would many of Tehran's traditional cautions go out the window.

Sellers are a less likely problem. The few cases of the transfer of nuclear capacity have often involved an attempt to undermine a mutual adversary when the transferring state itself saw little danger from the recipient. Money

[19] Pillar, *Terrorism and U.S. Foreign Policy*, 164.

[20] Byman, *Deadly Connections*, 79–116.

[21] Kenneth Pollack, *The Persian Puzzle* (New York: Random House, 2004), 420–421.

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has played a role in only a few instances.[22] North Korea may have threatened to transfer nuclear weapons in April 2003, but the threat was ambiguous and North Korea has mostly backed away from it.[23]

With this model in mind, terrorists represent at best a limited market for states. First, as noted above, the risks in terms of isolation and even attack are considerable. Second, the state cannot be sure that the group to which it transfers nuclear weapons will not turn against it. The history of terrorism is replete with cases of states turning on groups and groups turning on their former masters. Third, most terrorist groups, even al Qaeda, are poor by the standards of states and thus weak markets for nuclear weapons.[24]

Leakage: The Supply Problem

Inadvertent leakage of a nuclear weapon, whether due to infiltration or low-level bribery, is a far greater danger than is a deliberate transfer for financial or strategic reasons.[25] A state may have a policy that strongly opposes the transfer of nuclear weapons to terrorists, but an individual soldier or technician with access to a nuclear weapon may sympathize with the terrorists' cause or simply want the money they offer him.[26]

The leakage problem has several components: capacity of security officials, overall levels of corruption, and the level of penetration by terrorists

[22] Greg Koblentz finds a financial role in France–Pakistan, France–Iraq, and West Germany–Brazil (as well as the murkier case of Pakistan–Libya). Koblentz, "The Politics of Nuclear Cooperation."

[23] Andrew J. Coe, "North Korea's New Cash Crop," *The Washington Quarterly* 28 (Summer 2005): 73–84. Daniel Pinkston and Philip Saunders contend that Li Gun's reference to the possible sale of nuclear material "should be interpreted as an attempt to pressure the United States into reaching a negotiated settlement of the nuclear crisis rather than a serious statement of North Korean intentions." Daniel A. Pinkston and Philip C. Saunders, "Seeing North Korea Clearly," *Survival* 45 (Autumn 2003): 79–102. Furthermore, since that time, James Kelly has testified that "I would note that after a remark of April of 2003 by a North Korean interlocutory that it might be possible for them to transfer nuclear material or weapons but that they have gone quite the other direction and, in fact, in response to specific questions have repeatedly stated that they would not transfer nuclear weapons or fissionable material to any other destination outside of their country. But that assurance, like all the assurances from North Korea, has, unfortunately, not an unlimited value." Senate Foreign Relations Committee, 108th Cong., 2d sess., 15 July 2004. I would like to thank Greg Koblentz for bringing this to my attention.

[24] John Roth, Douglas Greenberg, and Serene Wille, "Monograph on Terrorism Financing," staff report to the National Commission on Terrorist Attacks Upon the United States (2004), 3. Accessed at http://www.911commission.gov/staff_statements/911_TerrFin_Monograph.pdf, 15 January 2007. Earlier reports that Aum Shimrikyo had close to $1 billion are probably exaggerated. See Gavin Cameron, "Multi-track Microproliferation: Lessons from Aum Shinrikyo and Al Qaida," *Studies in Conflict and Terrorism* 22 (October–December 1999): 277–310.

[25] Litwak, *Regime Change*, 293.

[26] Scott D. Sagan notes that the Nuclear Regulatory Commission, which screens foreign-born individuals who work at nuclear power plants, often does not have complete information on individuals' criminal records or activities overseas. This is an opening for criminals or foreign agents to gain access to nuclear materials. Scott D. Sagan, "The Problem of Redundancy Problem: Why More Nuclear Security Forces May Produce Less Nuclear Security," *Risk Analysis* 24 (August 2004): 935–946.

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or their sympathizers. Skilled security officials can foil plots and put in place sophisticated defenses to prevent the unwanted transfer of nuclear weapons. Corruption, however, can offset defenses, as individuals charged with guarding the nuclear facility may aid the jihadists. Similarly, terrorists (particularly jihadists) are trying to penetrate the military establishments of many countries, and in several countries have had members rise to senior levels. In both Egypt and Saudi Arabia, which are engaged in violent conflicts with domestic jihadists, the security services have had problems with penetration.[27] In Pakistan, several assassination attempts on Pervez Musharraf appear to have involved military officials linked to jihadists. Each component, by itself, is important, but together they present an exceptionally dangerous combination.

Data are hard to find on the characteristics of those who guard nuclear facilities. For example, there are significant numbers of jihadists in France, India, and the United Kingdom. Even Israel has a significant number of hostile Arabs who live within its pre-1967 borders. In all of these cases, however, the governments are extremely careful to limit who guards nuclear facilities. Israel openly discriminates against Arabs in its military and security forces, as does France. Although, in general, Iran has skilled security services, elements of the Iranian regime are particularly close to the Lebanese Hezbullah, with long-standing personal ties that could be used to circumvent formal regime controls.[28]

Table 1 provides a brief description of the supply side problem of leakage. In this Table, Pakistan stands out as an exceptionally dangerous combination of high levels of corruption and a high risk of terrorist penetration, with at best a medium-level security force. Other countries that are corrupt and do not have highly competent security forces do not have a grave risk of terrorist penetration.

The Mixed Rewards of Regime Change

The chance of leakage, ironically, can result from the change in regime of a country suspected of being a provider or seller of nuclear weapons. Regime change is usually thought of as a solution to the nuclear terrorism problem, but in practice, it can greatly increase the risk of leakage. As its proponents correctly argue, regime change can dramatically influence whether a state seeks

[27] Anonymous, *Imperial Hubris: Why the West is Losing the War on Terror* (Washington DC: Brassey's, 2004), 72. Anonymous has subsequently been identified as Michael Scheuer.

[28] Probably the best work on decision making in Iran is Wilfried Buchta's *Who Rules Iran? The Structure of Power in the Islamic Republic* (Washington DC: The Washington Institute for Near East Policy, 2000), though it is now somewhat dated. More-recent works include Hossein Seifzadeh, "The Landscape of Factional Politics and Its Future in Iran," *Middle East Journal* 57 (Winter 2003): 57–75; Abbas Maleki, "Decision Making in Iran's Foreign Policy: A Heuristic Approach," *Journal of Social Affairs* 19 (Spring 2002): 39–59; and Mehdi Moslem, *Factional Politics in Post-Khomeini Iran* (Syracuse, NY: Syracuse University Press, 2002).

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TABLE 1

Leakage Characteristics of Nuclear Weapons States

Country	*Security Capacity*	*Corruption Levels*[a]	*Terrorist Penetration Risk*	*Overall Risk*
China	High	Medium	Low	Low
France	High	Low	Low	Low
India	Medium	Medium	Low	Low
Iran[b]	Medium	Medium	Medium	Medium
Israel	High	Low	Low	Low
North Korea	High	Medium	Low	Medium
Pakistan	Medium	High	High	High
Russia	Medium[c]	High	Low	Medium
United Kingdom	High	Low	Low	Low
United States	High	Low	Low	Low

Source: Based on Transparency International's "Corruption Perception Index 2006." See http://www.transparency.org/policy_research/surveys_indices/cpi/2006. North Korea is not listed on the Transparency International report.

[a] The "medium" coding is used because of the poor level of development, which usually suggests a high degree of corruption.

[b] Iran is included as a nuclear weapons state even though it is years away from a nuclear weapons capability. It is included because of the current attention to the program with regard to the terrorism–nuclear nexus and because any discussion of policies should be robust for at least the medium term.

[c] Russia's security forces are quite strong by most measures. However, they face a tremendous problem, given the dispersed nature of the program and its vast size. See Litwak, *Regime Change: U.S. Strategy through the Prism of 9/11*, 316.

nuclear weapons and how it might use those it possesses. And regime change may be necessary should a regime arise that might defy the conventional wisdom presented above that downplays the likelihood of a deliberate transfer of nuclear weapons to terrorists.

But regime change can lead to an increased chance of leakage. Corruption may increase as war and uncertainty ravage the economy. The many controls that states put on their nuclear arsenals could vanish in the case of regime change. The competent security forces may dissipate. Worse, members of the security establishment might find themselves vengeful (or broke) and transfer nuclear weapons to terrorists who oppose the intervening power, or might themselves take up arms.

Consider Saddam Hussein's Iraq, and suppose that a significant nuclear weapons program had been found in the country. Various after-action reports suggest that the United States failed to secure the suspected nuclear facilities or otherwise smoothly manage the risk of transfer after the end of Saddam's regime.[29] In particular, massive quantities of conventional explosives were not secured after the invasion. Had there been a nuclear program, it is plausible (perhaps likely) that much of the technology would have been smuggled out of

[29] Jeff Stein, "Army General Tells a Little-Known Tale of Pre-War Intelligence on Iraq," 20 October 2006, accessed on the website of *Congressional Quarterly* at http://public.cq.com/public/20061020_homeland.html, 7 January 2007.

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the country or diverted to radicals within it, as happened to much of Iraq's conventional arsenal.

In addition, many of Saddam's elite security forces from the Special Republican Guard and other elite units have worked closely with anti-U.S. insurgents. The infiltration rate is high in Iraq and already poses major problems for the U.S.-backed regime.[30]

The Demand Problem

Despite their devastating effect and psychological power, few terrorist groups have sought, or actively seek, nuclear weapons or other weapons of mass destruction (WMD). There are several reasons for this.

Most important, few terrorists seek to kill in large numbers. As Brian Jenkins noted, "Terrorists want a lot of people watching and a lot of people listening but not a lot of people dead." Over thirty years later, Jenkins's assertion holds true for the majority of terrorist groups around the world. Using the low bar of twenty-five deaths per attack, analyst Chris Quillen finds seventy-six separate such attacks in the second half of the twentieth century (a figure that can be updated slightly to include several very bloody attacks in Iraq). Still, the number of terrorist acts that have killed over a hundred people is quite low—only forty-six, and many of these occurred during wars such as those in Algeria and Iraq.[31] And September 11 itself is still off the charts: no other single attack has killed over 500 people, let alone 3,000.

When assessing the risk of nuclear terrorism, much of the debate conflates chemical, biological, radiological, and nuclear weapons with WMD. For example, in an alarmist book about homeland security, the former inspector general of the Department of Homeland Security lumps radiological and nuclear trafficking.[32] Similarly, Graham Allison's *Nuclear Terrorism* reports that Chechen rebels "attempted nuclear terrorism" when they mixed cesium-137 and dynamite in a bomb that they planted but deliberately decided not to detonate.[33] But, in general, most uses of chemical or biological weapons by terrorists have not been attempts to kill large numbers of people.[34] The Liberation

[30] Bryan Bender, "Insurgents Infiltrating Coalition, US Says," *The Boston Globe*, 25 December 2004, A1.

[31] See Wm. Robert Johnston, "Incidents of Mass Casualty Terrorism," 24 November 2006, accessed at http://www.johnstonsarchive.net/terrorism/wrjp394.html, 15 January 2007; see also Chris Quillen, "A Historical Analysis of Mass Casualty Bombers," *Studies in Conflict and Terrorism* 25 (September–October 2002): 279–292.

[32] Clark Kent Ervin, *Open Target: Where America Is Vulnerable to Attack* (New York: Palgrave Macmillan, 2006), 118.

[33] Allison, *Nuclear Terrorism*, 32.

[34] John V. Parachini, "Comparing Motives and Outcomes of Mass Casualty Terrorism Involving Conventional and Unconventional Weapons," *Studies in Conflict and Terrorism* 24 (September–October 2001): 389–406. The Aum Shinrikyo attacks are a notable exception to this generalization. See

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Tigers of Tamil Eelam, for example, used an improvised chlorine gas attack to take a Sri Lankan Army post after the guerrillas had run out of ammunition, while the Revolutionary Armed Forces of Colombia has used cyanide-tipped bullets, which, while slightly more lethal than conventional ones, are hardly a WMD.

The reasons for this apparent restraint are complex, but most center around a desire to avoid offending potential constituents, a fear of provoking too harsh a state backlash, the bounds set by state sponsors, and the self-perceptions of terrorist group members, who often see themselves as "warriors" rather than "killers." In addition, terrorist groups have finite resources, and prefer to expend them on counterintelligence, operational security, or planning and executing conventional attacks.[35] Terrorists are also operationally conservative. Truck bombs, suicide attacks, kidnappings, and other tried-and-true methods work.[36]

The glaring exception to this generalization today is al Qaeda, and the jihadist cause more broadly. Ramzi Yousef, who masterminded the 1993 World Trade Center bombing, sought to kill 50,000 people, by his own admission. He wanted Americans to "share the pain" felt by the Muslim world.[37] Before September 11, bin Laden tried to acquire nuclear weapons, directing his lieutenants to acquire them in Sudan. Bin Laden has openly justified his group's possession of these weapons and has sought out scientists with knowledge on weapons programs. Bin Laden has also tried to acquire tactical nuclear weapons in the former Soviet Union.[38] The Central Intelligence Agency concludes that al Qaeda could make a crude nuclear device if it could gain access to fissile material.[39]

Troublingly, the movement is active in Pakistan and the former Soviet Union, both of which are at risk using the supply criteria identified above. The movement is also active in China, France, India, and the United Kingdom, all of which are at less risk but still of concern. Of these, the greatest concern is Pakistan, where the al Qaeda core, as well as the broader jihadist movement,

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also Jonathan B. Tucker, ed., *Toxic Terror: Assessing Terrorist Use of Chemical and Biological Weapons* (Cambridge, MA: MIT Press, 2000).

[35] John Parachini, "Putting WMD Terrorism into Perspective," *The Washington Quarterly* 26 (August 2003): 37–52.

[36] Bruce Hoffman, "The Modern Terrorist Mindset" in Russell D. Howard and Reid L. Sawyer, eds., *Terrorism and Counterterrorism: Understanding the New Security Environment* (Guilford, CT: McGraw Hill, 2002), 89; Paul Pillar, *Terrorism and U.S. Foreign Policy* (Washington DC: The Brookings Institution, 2001), 22.

[37] Parachini, "Comparing Motives and Outcomes," 392.

[38] Michael Scheuer, *Through Our Enemies' Eyes* (Washington DC: Potomac Books, Inc., 2006), 199–203; National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (New York: Norton, 2004), 60–61.

[39] As quoted in Litwak, *Regime Change*, 297.

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has an extensive presence. (Indeed, it is arguable that Pakistan is the current center of the jihadist movement.)

Both al Qaeda and the broader movement recognize the importance of technical capabilities. Al Qaeda has tried to recruit technicians to its own cause and to work with those of the former Soviet Union and Pakistan.[40] Al Qaeda itself is bureaucratic in the positive sense of the word, able to devise broad goals and ensure long-term funding and support for implementing them. The United States has broken this organization down but has not completely destroyed it.

Outside of the narrow group of individuals tied directly to bin Laden, a larger movement flourishes and has embraced the possibility of nuclear use. In 2003, Sheikh Nasir bin Hamad issued "A Treatise on the Ruling Regarding the Use of Weapons of Mass Destruction against the Infidels" justifying a nuclear attack that would kill ten million Americans.[41] Sheikh Nasir is not a voice in the wilderness, but rather a respected and admired cleric in Saudi Arabia.[42] Jihadists more broadly have embraced an apocalyptic and bloody worldview that sees mass slaughter as both deserved and necessary.

The limit of the jihadist movement is capabilities, not intentions. The al Qaeda core has been hit hard by the U.S. counterterrorism effort since September 11. Senior leaders are either dead, in jail, or on the run. Command and control has been heavily disrupted.[43] It is now far more difficult for this group to engage in sophisticated long-term plots that require global coordination—and many of the scenarios involving nuclear weapons require just this sort of effort, given the need to locate, purchase or steal, store, transport, and perhaps weaponize whatever is diverted. The broader jihadist movement is more amateurish and less globally coordinated. It is highly decentralized, which poses an intelligence challenge but also makes it harder for the group to conduct a global plot (particularly one involving an attack on the U.S. homeland).[44]

A Different Road to Go Down

U.S. and international efforts to discourage terrorism and proliferation should continue, and when the two concerns overlap, they deserve particular atten-

[40] Joby Warrick, "Suspect and a Setback in Al-Qaeda Anthrax Case," *The Washington Post*, 31 October 2006, A01. The leader of al Qaeda in Iraq also recently issued a call for WMD scientists: see "New Leader of Al-Qaeda in Iraq Calls for use of Unconventional Weapons Against U.S. Forces; Possible Poisoning of Iraqi Security Forces at Central Iraq Base." WMD Insights. November 2006, accessed at http://www.wmdinsights.com/I10/I10_ME1_NewLeaderAlQaeda.htm, 15 January 2007.

[41] Daniel Benjamin and Steven Simon, *The Next Attack* (New York: Times Books, 2005), 72.

[42] After being arrested by Saudi authorities, Nasr recanted his teachings on this subject.

[43] Paul R. Pillar, "Counterterrorism after Al Qaeda," *The Washington Quarterly* 27 (Summer 2004): 101–116.

[44] Pillar, "Counterrorism after Al Qaeda," 104.

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tion. The United States and the international community should consider several changes.

Choose Our Battles

Allison warns correctly that loose nuclear weapons and new nuclear programs and states can be dangerous; few observers disagree that these are dangerous, and preventing these should be priorities.[45] For nuclear terrorism, however, not all states and programs are created equal. Because the terrorist danger is so much greater from jihadists with ties to or a mindset like that of al Qaeda, the focus should be on existing nuclear states that are at risk from Islamic extremism.

A related key is preventing the emergence of additional countries like Pakistan that could be at the center of a terrorism–nuclear nexus. Recent instances of proliferation could lead to a "tipping point" in which new states seek nuclear weapons.[46] Saudi Arabia, Egypt, Indonesia, and the United Arab Emirates are four countries that could conceivably go nuclear in the years to come, and they have a large jihadist problem. To go back to the criteria presented in Table 1, all four of these countries have at least some problem with corruption (though not as high as Pakistan's) and, like Pakistan, have high levels of insurgent penetration. Even more worrisome, the security forces of these countries are, on average, *less* competent than those of Pakistan. Having Japan or South Korea go nuclear in response to the North Korean bomb or having Brazil or Argentina re-start their programs is not desirable, but the danger from nuclear terrorism is far less in these instances than if Saudi Arabia, Indonesia, or another state with a jihadist problem and sympathizers in government ranks were to go nuclear.

The United States must also be careful of pushing too hard on counterterrorism to the detriment of counterproliferation. One (but only one) of Iran's motivations for acquiring nuclear weapons is fear of a U.S. attack, a fear made worse by regular U.S. threats against the clerical regime; these threats, in turn, are motivated in part by Iran's backing of terrorists and other radical groups. For countries that are involved in both activities, the relationship between the two must be recognized as policy is formulated.

It is conceivable that, at times, the United States may have to choose between counterterrorism and counterproliferation. Pakistan, for example, has been only a lukewarm partner on counterterrorism, but has been even less helpful on

[45] Several current counterproliferation programs' regimes deserve to be strengthened. The Proliferation Security Initiative and the Cooperative Threat Reduction Program (often referred to as Nunn-Lugar) are two obvious ones. As few experts disagree on these, I will not explore them in detail. *9/11 Commission Report,* 381; Allison, *Nuclear Terrorism*, 141–176.

[46] Litwak, "Non-proliferation and the Dilemmas of Regime Change," 9; Kurt M. Campbell, "Nuclear Proliferation Beyond Rogues," *The Washington Quarterly* 26 (Winter 2002–03): 7–15.

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counterproliferation. Similarly, in the past, the United States pushed Libya on counterterrorism, making that a priority over counterproliferation.[47] In such cases, the key criteria are the extent of the nuclear program versus the danger of terrorism from that country. Libya's nuclear program was judged to be a fledgling, while its terrorism capacity was well-proven after Pan Am 103 and other horrors. When in doubt, the emphasis should be on counterproliferation. Even such horrors as September 11 would pale before a nuclear attack, and reducing the probability of the latter is always vital.

Timing is particularly important when determining policy. When a country has not yet acquired nuclear weapons but seeks to do so, preventing the nuclear program should take precedence over conventional terrorism support. However, once a country has crossed the nuclear line, the emphasis should shift toward ensuring that its nuclear program is secure from terrorists.

Influence Global Opinion

The United States must also remember that the overall popularity of U.S. policies plays into this article's rather narrow focus on counterproliferation and counterterrorism. In countries where public opinion matters for policy (and of the current nuclear states, only North Korea is an exception to this), defying U.S. pressure can become an important political benefit for area regimes. As Robert Jervis argues, "These views eventually will be reflected in reduced support for and cooperation with the United States."[48] Perceptions of the United States also are vital when regimes are considering the acquisition of nuclear weapons in the first place. Because of U.S. conventional military preponderance, nuclear weapons are one of the few means states can use to level (slightly) the playing field.

Popular opinion matters tremendously for counterterrorism. If anti-U.S. jihadists are seen as heroes, which they are in Pakistan and Saudi Arabia, then the population in general is less likely to provide intelligence on them and on people who might assist them. Similarly, individuals who hold security positions or work with nuclear programs might be more likely to assist the jihadists in the belief that their cause is just.

Improve Technologies for Recognizing Nuclear Attribution

The United States is already engaged in a considerable effort to identify whether the fissile material from a blast originated in Pakistan, Russia, or

[47] Martin Indyk, "The Iraq War Did Not Force Gadaffi's Hand," *Financial Times*, 9 March 2004; and Bruce W. Jentleson and Christopher A. Whytock, "Who 'Won' Libya? The Force-Diplomacy Debate and Its Implications for Theory and Policy," *International Security* 30 (Winter 2005/06): 47–86.

[48] Robert Jervis, "Why the Bush Doctrine Cannot Be Sustained," *Political Science Quarterly* 120 (Fall 2005): 351–378.

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another state. Such efforts on the attribution of a blast give teeth to U.S. threats that it will hold states accountable for any involvement in nuclear terrorism. Effective coercion against a state requires being able to show convincingly that it is at fault, both to domestic and to international audiences. If state leaders know that they will be held responsible for a blast that occurred with nuclear material diverted from their country, they are more likely to take the necessary action to secure it. This is no guarantee against incompetence or failure, but it does increase the chances that leaders will act, as they do (or should) fear the U.S. response in the event of an attack.

Build State Capacity

Building up state capacity is essential for both counterproliferation and counterterrorism. Security services of new proliferators require extensive and continuing training. However, there is a passionate debate over such assistance, particularly to countries like India and Pakistan, which never accepted the NPT. Such aid legitimizes the program, and thus can plausibly act as a spur for other countries, as they know they would suffer only a relatively brief period of isolation before being embraced again by the nuclear community. In addition to legitimating the programs, such assistance might also allow new proliferators to deploy weapons more effectively in a crisis. But even worse is the risk that the state could lose control over them. Jessica Stern and Greg Koblentz point out that there is a tension between security and deployability.[49]

Norm-based institutions such as the NPT do have value, but they are at best a small part of most states' decisions to pursue or abandon nuclear weapons. The additional assurances of nuclear security outweigh the marginal loss with regard to undermining the NPT.

Training programs should focus on the police and domestic security services as well as the military. A strong police force can reduce the possibility of a robust criminal network that would steal a nuclear weapon.

Because of the possibility of leakage, corruption also becomes a national security issue. Countries must be sure to offer high salaries to those involved in

[49] "There may be a tension, however, between security and stability. Elaborate protective measures and locks enhance security, but, depending on a state's nuclear weapons doctrine and the threats it faces, such security measures could make the arsenal more vulnerable to a first strike and thereby decrease stability. In general, the more centralized the weapons, the more secure they are, but the more vulnerable they are to preventive or preemptive strikes. Conversely, the more dispersed the force (everything else equal), the more vulnerable the weapons to seizure by terrorists, theft by insiders, or unauthorized use. These tensions can be exacerbated if a state adopts a launch on warning posture or plans to limit damage through preemption. The dilemma faced by states is ensuring that their nuclear forces will *always* be able to be launched by proper authorities and *never* be used in an unauthorized manner." Jessica Stern and Gregory Koblentz, "Preventing Unauthorized Access to and Use of Nuclear Materials and Weapons: Lessons from the United States and Former Soviet Union" (paper presented by Jessica Stern at the Center for International Security and Cooperation Conference on Preventing Nuclear War in South Asia, Bangkok, Thailand, 6 August 2001).

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their nuclear programs, even if they are relatively low-level officials. Yet a higher salary is often at best a scant inducement toward honesty.

Democratization should be approached with caution in states of concern. Democratization does not necessarily lead to a rejection of a nuclear program. Litwak points out that an appeal to national chauvinism when a new government came to power was one of the reasons for the 1998 Indian nuclear test.[50] More broadly, he argues that it is the intention of a regime, rather than regime type, that is the key determinant of proliferation. Democratization that does not address issues of prestige, a need for deterrence, and other reasons for proliferation will do little to change the overall regime desire for nuclear weapons.[51]

Democratization also offers risks for counterterrorism as well. Democratization often leads to the weakening of security services. In addition, the rule of law inherent in democratization limits the ability of governments to do massive roundups or otherwise engage in harsh crackdowns against radical groups. Finally, democratization may usher in a strongly anti-American regime. In Pakistan, for example, a government that reflected the will of the Pakistani people would probably be far more hostile to the United States than is the Musharraf government.

Avoid the Unilateral Temptation

The Bush administration is regularly slammed for its unilateral approach to foreign policy, a criticism stemming conceptually from its September 2002 "National Security Strategy of the United States" and the 2003 war with Iraq, which was waged without a final UN resolution authorizing it and to which only a handful of countries contributed significant military capabilities. In practice, however, the Bush administration has been multilateral in its response to both the North Korean and Iranian nuclear programs. Moreover, the day-to-day of counterterrorism is highly multilateral, involving cooperation between and among the security services of dozens of countries.

Multilateralism is also essential for effective counterproliferation, particularly when the goal is to isolate the regime in question. South Africa and Ukraine, for example, rejected their nuclear programs in order to be integrated into the world's political and economic system.[52] The most dramatic turnaround was Libya, which rejected terrorism and later its WMD programs in exchange for an end to political and economic isolation, particularly from the United States.

The good news is that allies should be especially forthcoming on the nuclear terrorism issue. This issue, of course, is the ultimate test of global citizenship. More cynically, the major powers in particular face threats of their own that put them at risk for catastrophic terrorism. Russia has its Chechens, China its Uighurs, India

[50] Litwak, "Non-proliferation and the Dilemmas of Regime Change," 13.
[51] Ibid., 11, 27.
[52] Ibid., 12.

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its Kashmir problem, and Europe its home-grown and imported militants.[53] Not all of these groups will necessarily seek nuclear weapons, but the potential is real enough to alarm these governments.[54] Only Japan is left out of this equation, and Tokyo is usually careful to follow the U.S. lead on key security issues.

Recognize the Limits of Military Power

Military strikes short of regime change can also be exceptionally dangerous. It is difficult for such strikes to succeed tactically. After the Israeli raid on Osiraq, nuclear weapons seekers learned to disperse their facilities, put key sites underground, and shroud their programs in deception. Superb intelligence and sustained strikes are necessary for any chance of success. More-limited attacks could conceivably delay a program by hindering the production of key components. However, they also can lead to increased regime and popular determination to acquire nuclear weapons, raising the stakes in terms of threat and provoking a nationalistic backlash.

If nuclear weapons have already been acquired, a military strike makes it more plausible (but still unlikely) that states may transfer them to terrorist groups. Here the target regime may see the terrorist group as a way of ensuring a secure second strike: by giving terrorists access to the weapons, the regime has a means of striking back even if it is decapitated. That is still a remote possibility, given limits on trust and control, but there remains a real risk that a threatened regime will delegate control of the weapons to local commanders to avoid a devastating first strike on its command and control.

The Pakistan Perplex

Most of the above recommendations are general principles that can be applied (and tailored) to different situations. However, the United States and the international community must focus tremendous attention on Pakistan, the most dangerous country in the world with regard to nuclear terrorism. U.S. counterproliferation and counterterrorism goals are in tension in Pakistan. For now, the United States has emphasized counterterrorism, accepting Pakistan's rather pathetic excuses with regard to the A.Q. Khan network in order to preserve cooperation on counterterrorism and maintain decent relations in general. Unfortunately, Pakistan has a large jihadist presence, a weak government, high levels of corruption, and a nuclear program and evidence that it has difficulty controlling scientists who have aided state and nonstate actors (to say nothing of

[53] Robert S. Leiken, "Europe's Mujahideen," *Foreign Affairs* 84 (July/August 2005): 120–135; Javier Jordan and Nicola Horsburgh, "Mapping Jihadist Terrorism in Spain," *Studies in Conflict and Terrorism* 28 (May–June 2005): 169–191. Russia's efforts to improve nuclear security are surprisingly slow, given the gravity of its problems with the Chechens. See Matthew Bunn, "Cooperation to Secure Nuclear Stockpiles," *Innovations* 1 (Winter 2006): 115–137.

[54] Allison makes this point with regard to Russia, China, and the West. *Nuclear Terrorism*, 187.

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an ongoing standoff with India and endemic civil strife and support for the Kashmiri insurgency). Al Qaeda now has a de facto haven in several remote tribal parts of Pakistan and is in the process of reconstituting itself. The A.Q. Khan network suggests that Pakistan cannot, or will not, control key nuclear scientists, an alarming development.[55] Even more worrisome are the security risks posed by Pakistani nuclear scientists sympathetic to the jihadi movement. This was demonstrated by the activities of Umma Tameer-e-Nau, a nongovernmental organization founded by Pakistani nuclear scientists that provided information to Osama bin Laden and the Taliban about nuclear weapons.[56]

There are few good choices with regard to Pakistan, and the United States has hitched its wagon to Musharraf's rather dim star as a default option. For now, this may be the only realistic choice, but correcting this paucity of options should be a priority. Washington should aggressively court various factions in Pakistan, hedging its bets should Musharraf fall. In addition, the United States should provide economic assistance and other ways of building up the Pakistani state and increasing favorable opinions of the United States.

Washington should also be willing to break with its general policy of punishing states that defy the NPT in order to help Pakistan ensure the security of its nuclear program. The U.S. principle is correct, and it usually should be followed. However, Pakistan is that rare combination of a dangerous leaker and a jihadist hotbed. It is worth weakening the norm the NPT fosters and even legitimating Pakistan's nuclear program to combat this dangerous combination.

Remember What Ain't Broken

Finally, the United States should also continue some policies that have been successes, albeit unsung ones. Most obviously, the United States must work to maintain pressure with regard to any transfer of unconventional systems. This has been a clear success for U.S. policy. Preventing any transfer of unconventional weapons was a concern that received tremendous attention during the Clinton administration and even more from the Bush administration after September 11. As a result, states today are more cautious than ever in their

[55] David Albright and Corey Hinderstein, "Unraveling the A.Q. Khan and Future Proliferation Networks," *The Washington Quarterly* 28 (Spring 2005): 111–128; Guarav Kampani, "Proliferation Unbound: Nuclear Tales From Pakistan," CNS Research Story, 23 February 2004, accessed at http://cns.miis.edu/pubs/week/040223.htm, 15 January 2007.

[56] The founder of UTN, Bashir-ud-Din Mahmood, was formerly the director for nuclear power at the Pakistani Atomic Energy Commission (PAEC); another active member was Abdul Majeed, a former high-ranking official at the PAEC and an expert in nuclear fuels. The best summary is David Albright and Holly Higgins, "A Bomb for the Ummah," *Bulletin of the Atomic Scientists* 59 (March/April 2003): 49–55. More details can be found at David Albright and Holly Higgins, 30 August 2002, "Pakistani Nuclear Scientists: How Much Nuclear Assistance to Al Qaeda?" ISIS, accessed at http://www.exportcontrols.org/print/pakscientists.html, 15 January 2007. I would like to thank Greg Koblentz for bringing this to my attention.

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support for terrorism and recognize that providing chemical, biological, nuclear, or radiological weapons would cross a U.S. "red line."

In addition to continuing this pressure at a diplomatic level, the link between terrorists and WMD must remain a top intelligence priority. Although it would be difficult to inflict mass casualties with many chemical, nonviral biological, or radiological agents or weapons, the psychological impact of the use of these—and thus the effect on the world economy and overall confidence in government—would still be considerable. One clear indicator of the potential for the transfer of such weapons would be the transfer of mid-range technologies, such as surface-to-air missile systems, from a state to a terrorist group, suggesting that the state in question has little fear of escalation.

Another problem would be the emergence of a highly ideological regime with links to terrorist groups. Iran under Khomeini, Sudan in the early 1990s, and the Taliban, until September 11 were all highly ideological regimes that often did not share the traditional concerns about economic punishment or political isolation that have made other state sponsors of terrorism cautious. The reemergence of an ideological regime in a weapons state should be cause for grave concern and should lead to a policy of regime change, as this is a rare case where deterrence may not hold.[57]

Final Words

This essay argues that the terrorism–WMD nexus is indeed of grave concern but that U.S. policy has both flaws in its overall design and particular problems with regard to its practice. However, although there are few easy answers to the challenge of WMD terrorism, there are better ones. By changing the emphasis of U.S. policy to better address the issue of leakage and focusing more on a few key countries like Pakistan, the United States will be better able to prevent terrorists from acquiring nuclear weapons.

In guarding against high-end threats, we must not lose track of the fact that terrorists are far more likely to conduct mid- and low-level attacks. The rare instances of terrorism involving unconventional weapons have killed few people, whereas terrorists have myriad ways of killing many people with conventional weapons. Arson, sabotage at a chemical plant, and attacks on aviation security all are well within terrorist group capabilities and could kill hundreds. Such attacks, of course, do not pose a risk of catastrophic harm, but a U.S. policy that increased the already-considerable risk of such attacks at home and abroad in the name of stopping nuclear terrorism would deserve considerable scrutiny to ensure that the trade-offs are indeed sensible.*

[57] Scott Sagan points out that a major reason that Iran seeks a nuclear weapon is to resist a U.S. program of regime change and that abandoning this policy may lead Tehran to stop pursuing a nuclear weapon. Sagan, "How to Keep the Bomb from Iran," 55.

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The Detention and Trial of Enemy Combatants: A Drama in Three Branches

MICHAEL C. DORF

Within a week of the attacks of 11 September 2001, the United States Congress authorized the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks . . . ."[1] Although this Authorization for Use of Military Force (AUMF) was not literally a declaration of war, President George W. Bush interpreted it as activating his full wartime powers as Commander in Chief, including the power to detain enemy combatants. Then, claiming that Taliban, al Qaeda, and other irregular fighters in Afghanistan and elsewhere were entitled neither to the procedural protections of the criminal justice system, nor to the humanitarian protections of the Geneva Conventions, the Bush administration asserted an entitlement to hold detainees indefinitely, subject them to harsh methods of interrogation, and try them, if it chose not to simply hold them, before specially constituted military commissions. Moreover, the administration eventually claimed, the civilian courts were powerless to rule on the legality of such measures.

Inevitably, and almost immediately, these policies were challenged in the federal courts. However, the cases did not make their way to the point of a Supreme Court decision until June of 2004, and during the intervening period, Congress was almost entirely silent. Indeed, Congress would not legislate on the subject of detainee treatment until it enacted the Detainee Treatment Act (DTA) at the end of 2005,[2] and even then, it spoke with less than complete

[1] *Authorization for Use of Military Force*, U.S. Public Law 107-40, 115 Stat. 224 107th Cong., 1st sess. (18 September 2001), note following 50 U.S.C.A. §1541 (2000 ed., Supp. III).

[2] *Detainee Treatment Act of 2005*, U.S. Public Law 109-148, div. A, tit. X, 119 Stat. 2739 109th Cong., 1st sess. (30 December 2005) (to be codified at 42 U.S.C. §§2000dd to 2000dd-1 and other provisions of the U.S. Code).

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clarity. Accordingly, in assessing the legality of the administration's treatment of detainees, the Supreme Court has had to address the delicate question of constitutional limits on the political branches' respective war powers, while attempting to squeeze meaning from highly ambiguous statutory text. Thus far, the Court's approach has been to avoid sweeping decisions about the scope of individual rights. Instead, in each of its three leading rulings—*Hamdi v. Rumsfeld*,[3] *Rasul v. Bush*,[4] and *Hamdan v. Rumsfeld*[5]—the Court has rejected the proposition that the initial 2001 AUMF conferred on the President the sweeping powers he has claimed.

The Court's decisions have thus been "democracy-forcing," in the sense that they have required the President to seek authorization for his approach from Congress, and in the fall of 2006, Congress largely obliged. Its enactment of the Military Commissions Act (MCA)[6] authorized indefinite detention based on findings of a military panel, trial by special military commission, and only limited access to domestic courts to challenge these determinations. Notably, although the DTA and MCA maintain criminal penalties for U.S. military and civilian personnel who commit future acts of torture or other "grave breaches" of the Geneva Conventions' Common Article 3, they provide immunity for some past such acts, and they prevent detained aliens from objecting to such practices in a civilian court. This article explains how the interactions among a largely passive Congress, an extraordinarily assertive President, and a divided but determined Supreme Court led to the MCA.

Unlawful Enemy Combatants

The lynchpin of the Bush administration's claimed authority over detainees is the category of "unlawful enemy combatants." Persons engaging in ordinary crime within the United States are entitled to be tried in civilian courts, thereby triggering the well-known protections of the Bill of Rights: right to counsel, right to present evidence, right to confront adverse witnesses, and so forth. Persons engaging in warfare, however, need not be treated as criminal defendants. In a conventional war, captured enemy soldiers must be treated humanely and cannot be tried for their acts on the battlefield, unless those acts violated the law of war. The law of war, in turn, originally derived its authority from the customary practices of nations, but in the twentieth century became codified in a series of treaties to which the United States is a signatory: the Geneva Conventions.

There is, in addition, an intermediate category between common criminals and prisoners of war: persons who engage in warfare but because of

[3] *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

[4] *Rasul v. Bush*, 542 U.S. 466 (2004).

[5] *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006).

[6] *Military Commissions Act of 2006*, U.S. Public Law 109-366, 120 Stat. 2600 109th Cong., 2nd sess. (17 October 2006).

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the methods and organization of their forces, sacrifice the protections of the Geneva Conventions. "Unlawful enemy combatants" sacrifice much of the protection afforded by the international law of war—just how much has been one of the most hotly contested questions—either because they target civilians or blend into the civilian population so as to render the enemy unable to distinguish between civilians and combatants. The 1977 Additional Protocols protect even such guerilla fighters,[7] but the United States never ratified these provisions. Accordingly, the Bush administration has consistently argued that Taliban, al Qaeda, and other irregular fighters can be detained, questioned, and tried without regard to the niceties of the Geneva Conventions.

Detention versus Trial and Aliens versus Citizens

The leading cases have thus far addressed two principal questions. First, what limits, if any, apply to the president's power to detain persons deemed unlawful enemy combatants? And second, if the administration opts to try a detainee for war crimes, what kind of tribunal must it use? No Supreme Court case has yet challenged the conditions of confinement at the U.S. naval base at Guantanamo Bay or elsewhere, although the Court's rulings in the detention and trial cases have implications for conditions of confinement.

Although the vast majority of detainees held by the government are aliens, a few citizens have also been captured, detained, and charged. John Walker Lindh, an American convert to Islam, was captured in Afghanistan and, for reasons that were never made clear by the administration, charged in a civilian court, in which he pleaded guilty to fighting for the Taliban and carrying a weapon. He was sentenced to twenty years' imprisonment.[8] Another American convert to Islam, Jose Padilla, by contrast, was held in military custody. A federal appeals court ruled that form of detention unlawful,[9] but the Supreme Court vacated the ruling because it found that Padilla had filed his habeas corpus petition in the wrong federal court.[10] After further proceedings, the government announced, again without explanation, that it would charge Padilla in civilian court after all.[11] Meanwhile, the government chose to prosecute one alien detainee—Zacarais Moussaoui—in civilian court, yet again without

[7] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 U.N.T.S. 609.

[8] See Katherine Q. Seelye, "Threats and Responses: The American in the Taliban; Regretful Lindh Gets 20 Years in Taliban Case," *The New York Times*, 5 October 2002.

[9] *Padilla v. Rumsfeld*, 352 F.3d 695 (2d Cir. 2003).

[10] *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

[11] See *Padilla v. Hanft*, 126 S. Ct. 1649, 1650 (2006) (Kennedy, J., concurring in the denial of certiorari).

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explanation for the choice of forum. Moussaoui pled guilty to conspiring with al Qaeda operatives,[12] and was sentenced to life imprisonment.[13]

The *Hamdi* Case

The Supreme Court has thus far addressed the merits of exactly one case in which the government sought to hold a U.S. citizen in military custody without civilian judicial oversight. That case concerned Yaser Esam Hamdi, who was born in Louisiana. Under Section I of the Fourteenth Amendment, he is therefore a citizen of the United States, even though he spent most of his life outside this country. After being captured during the Afghanistan conflict, Hamdi was initially held at the naval base in Guantanamo Bay, Cuba. But when his American citizenship came to light, the government transported him from there to the brig at the Norfolk naval station. Habeas corpus petitions were filed on his behalf, and after a number of contentious proceedings in the lower federal courts, Hamdi's case reached the Supreme Court. Throughout the course of litigation, the government took the position that a wartime determination by the President or his deputies that an individual was an unlawful enemy combatant should be conclusive on the courts.

According to the government, Hamdi's citizenship was no bar to military custody. The government placed principal reliance on the so-called Nazi Saboteur Case, *Ex Parte Quirin*.[14] There, the Supreme Court rejected statutory and constitutional challenges to the trial by military commission of German agents who, during World War II, landed submarines in the United States, discarded their uniforms, and proceeded to attempt to destroy civilian infrastructure. The Court found that neither the international law of war nor the Articles of War that Congress had adopted extended procedural protections of the sort sought by the petitioners to "unlawful enemy belligerents." Crucially, one of the petitioners, Herbert Hans Haupt, was a U.S. citizen; yet the Court did not find this fact significant.

Understandably, much of the technical legal argument in *Hamdi* centered around how to read the *Quirin* decision. A pair of odd bedfellows, Justice Antonin Scalia, arguably the Court's most conservative member, and Justice John Paul Stevens, arguably its most liberal member, would have utterly rejected the government's position. In their view, the Supreme Court's decision in *Quirin* "was not [its] finest hour."[15] Further, even if respected, *Quirin* itself suggested a crucial distinction: there, the petitioners conceded that they were

[12] See Neil A. Lewis, "Moussaoui Tells Court He's Guilty of a Terror Plot," *The New York Times*, 23 April 2005.

[13] See Neil A. Lewis, "Moussaoui Given Life Term by Jury Over Link to 9/11," *The New York Times*, 4 May 2006.

[14] *Ex Parte Quirin*, 317 U.S. 1 (1942).

[15] *Hamdi v. Rumsfeld*, 542 U.S. 507, 569 (2004) (Scalia, J., joined by Stevens, J., dissenting).

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part of the German force; Hamdi, by contrast, claimed that he had been mistakenly swept up in Afghanistan. As a U.S. citizen, Justices Scalia and Stevens would have ruled, Hamdi was entitled to be tried, if at all, for treason by a civilian court with its full procedural protections.

At the other extreme, Justice Clarence Thomas would have accepted the government's argument. Allowing for the possibility that Congress might have the power to limit the president's ability to employ military commissions, Justice Thomas nonetheless noted that Congress had taken no such limiting action. On the contrary, he read the AUMF as adding congressionally sanctioned authority to the president's already considerable powers as Commander in Chief. The power to detain unlawful enemy combatants, Justice Thomas concluded, "includes making virtually conclusive factual findings."[16]

The lead opinion in the *Hamdi* case was written by Justice Sandra Day O'Connor, and it staked out a middle course between the two aforementioned positions.[17] Justice O'Connor conceded two crucial points to the administration. First, on the strength of *Quirin*, she acknowledged that the Constitution poses no bar to military detention of a U.S. citizen, even if he contests the grounds for his detention. Second, she read the general language of the September 2001 AUMF to include the usual incidents of war, including detention of persons deemed enemy combatants.

Despite these substantial concessions to the Bush administration, the most quotable line from the lead opinion in *Hamdi* was a rebuke: "A state of war is not a blank check for the President when it comes to the rights of the Nation's citizens."[18] In substance, this meant that while the government could hold U.S. citizens in military custody, the Court would scrutinize the procedures used to determine whether someone is in fact an unlawful combatant. The president's say-so is not sufficient.

Just what procedures were required? The *Hamdi* lead opinion invoked a 1976 precedent that set forth a general test for due process that balances the individual interest against that of the government.[19] Weighing these factors, the plurality found that at a minimum, a person the government seeks to designate as an unlawful enemy combatant must "receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker."[20] He would also be entitled to assistance of counsel. At the same time, the Court gave considerable leeway to

[16] *Hamdi*, 542 U.S. at 589 (Thomas, J., dissenting).

[17] Justice O'Connor spoke for a plurality of herself, Chief Justice Rehnquist, Justice Kennedy, and Justice Breyer. Yet a fourth view was taken by Justices Souter and Ginsburg, who would have ruled that the AUMF did not authorize Hamdi's detention, which was therefore unlawful under another federal statute, the *Non-Detention Act*, 18 U.S.C. § 4001(a). The latter prohibits imprisonment or detention of a citizen "except pursuant to an Act of Congress."

[18] *Hamdi*, 542 U.S. at 536.

[19] See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

[20] *Hamdi*, 542 U.S. at 533.

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the government to depart from procedures associated with civilian courts in criminal cases. The government could place the burden of disproving its evidence on the defendant, could introduce hearsay, and could utilize military as opposed to civilian tribunals to make the combatant status determination.

Thus, while *Hamdi* sent a powerful rhetorical message about the limits of presidential power even in wartime, it was hardly an unqualified triumph for civil liberties.

The *Rasul* Case

The same day that it decided *Hamdi*, the Supreme Court decided another case, *Rasul v. Bush*, that was of far greater practical significance. For while the *Hamdi* case addressed the standards applicable to the classification and detention of Hamdi and a tiny handful of other U.S. citizens held by the government, *Rasul* concerned the detention of aliens, who comprised the overwhelming majority of detainees.

The issue in *Rasul* was whether aliens held at the U.S. naval base in Guantanamo Bay, Cuba, could file habeas corpus petitions in federal court. The government took the position that they could not. Even if their detention violated federal statutes, the U.S. Constitution, and international law, according to the government, the federal courts had no jurisdiction to entertain the alien detainees' challenges.

Just as the government had relied in *Hamdi* on the World War II case of *Ex Parte Quirin*, so in *Rasul* the government invoked another World War II precedent, *Johnson v. Eisentrager*.[21] The United States had tried German nationals captured in China for the crime of continuing to engage in warfare after their government had surrendered. The Germans challenged the lawfulness of the military commissions that tried and convicted them, but the Court rejected their claims on jurisdictional grounds.

The *Eisentrager* Court found that the habeas corpus statute did not authorize suit, and that this result was fully consistent with the Constitution. The Constitution confers on nonresident aliens no right of access to U.S. courts, the Court reasoned.

Nonetheless, in *Rasul*, a divided Supreme Court ruled that there was jurisdiction over habeas corpus petitions filed by Guantanamo Bay detainees. The justices suggested that some of the factors that had led the *Eisentrager* Court to find no constitutional entitlement to habeas were absent in *Rasul*. Ultimately, however, the Court found no need to resolve the constitutional question. The majority concluded that because the naval base was, for all practical purposes, U.S. territory, the habeas corpus statute applied to persons held there. The statutory aspect of *Eisentrager*, the *Rasul* Court said, had been superseded by subsequent decisions.

[21] *Johnson v. Eisentrager*, 339 U.S. 763 (1950).

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Accordingly, the *Rasul* majority paved the way for the lower courts to entertain habeas petitions from all Guantanamo Bay detainees. The Supreme Court said nothing, however, about the substantive merits of the claims pressed by the detainees.

The *Hamdan* Case, the Detainee Treatment Act, and the Military Commissions Act

There matters stood until the Supreme Court granted review in *Hamdan.* After the Court accepted the case for review, but before the case was argued, Congress enacted the DTA. Among other things, it stripped the federal courts of the authority to hear habeas corpus petitions by detainees facing the possibility of trial by military commission, although it did provide for statutory and constitutional (but not international-law-based) challenges to be brought after conviction by such a commission. Yet it was not entirely clear whether the DTA's jurisdiction-stripping provisions even applied to pending cases such as Salim Ahmed Hamdan's, rather than applying only to future cases. Nor was it clear whether the application of the DTA to pending cases would satisfy the Constitution, absent a valid suspension of the privilege of the writ of habeas corpus.

Although once again avoiding a constitutional ruling on the permissible limits that can be placed on habeas corpus, the Supreme Court's decision in *Hamdan* was, in nearly all of its particulars, a major setback for the Bush administration's executive unilateralism.

As for the facts, Hamdan himself appeared to be closer to the events of 11 September 2001 than either Hamdi or Shafiq Rasul. Hamdan was delivered to U.S. military forces in Afghanistan in late 2001, detained at the U.S. naval base at Guantanamo Bay, Cuba, and eventually charged with conspiracy to attack civilians in his alleged capacity as driver and bodyguard for Osama bin Laden. Hamdan argued that trial by military commission was illegal, but lost in the court of appeals, where John Roberts, then a circuit judge, joined a decision finding, among other things, that Hamdan's claims were premature.[22] Because of his earlier participation, now-Chief Justice Roberts took no part in the case at the Supreme Court.

Justice Stevens wrote the lead opinion in *Hamdan*, which Justices David Souter, Ruth Bader Ginsburg, and Stephen Breyer joined in full, and which Justice Anthony Kennedy—true to form as the crucial swing vote on the post-O'Connor Court—joined in part. Justices Scalia, Thomas, and Samuel Alito dissented from nearly every important aspect of the Court's ruling. Justice Stevens garnered a full, five-justice majority for the following propositions:

- The DTA did not apply to pending cases and thus did not strip the Supreme Court of jurisdiction to hear Hamdan's case, nor would it deprive lower courts of jurisdiction over petitions filed before the DTA was enacted in late 2005.

[22] See *Hamdan v. Rumsfeld*, 415 F.3d 33 (D.C. Cir. 2005).

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- Military commissions other than ordinary courts-martial of the sort authorized by the Uniform Code of Military Justice (UCMJ) are constitutionally permissible only if warranted by military exigency or Act of Congress.
- Given Hamdan's detention for years, far away from an active battlefield, no exigency warranted the use of military commissions in his case.
- No Act of Congress authorized the military commissions.
- Indeed, the UCMJ, by incorporating the international law of war, made the so-called Common Article 3 of the Geneva Conventions, governing treatment of prisoners and noncombatants, applicable to any effort to try combatants for war crimes.
- Common Article 3 applied notwithstanding the guerilla tactics of al Qaeda, because the conflict occurred in Afghanistan, a territory covered by the Conventions, making resort to the 1977 Protocols (to which the United States is not a signatory) unnecessary.
- Accordingly, detainees could only be tried before a tribunal that afforded the same protections as a court martial, absent impracticability.
- The commissions manifestly failed to afford the same procedural protections as courts martial.
- The administration had offered no persuasive evidence of the impracticability of using courts martial or their equivalent.

In portions of the lead opinion that Justice Kennedy did not join—because he thought them unnecessary to the resolution of the case—and that therefore represented the views of only four justices, Justice Stevens also made two further determinations:

- The indictment was invalid on the grounds that conspiracy, standing alone and without any charge of overt acts by the person charged during the wartime period, is not a recognized war crime.
- The military commissions were defective because they would have permitted important portions of the trial to occur outside the presence of the accused. (Although Justice Kennedy shared the majority's disapproval of other procedural differences between the military commissions and courts martial—especially the dependence of the former on persons within the chain of command—he did not reach the plurality's conclusion that they were defective for this further reason.)

Implications

We can identify at least six important implications of the foregoing determinations.

Narrowing the World War II Precedents

As discussed above in connection with the *Hamdi* and *Rasul* decisions, ever since the Bush administration decided that military detention and military com-

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missions would feature in its response to the attacks of 11 September 2001, the administration has invoked World War II–era cases as support for its approach. In both *Quirin* and *Eisentrager*, as well as a third case, *In Re Yamashita*,[23] the Court had in one way or another rejected a challenge to the outcome of a military tribunal.

Critics of administration policies had urged the Supreme Court to repudiate its World War II–era jurisprudence and return to the principles announced in a Civil War–Era case, *Ex Parte Milligan*.[24] In *Milligan*, the Court stated, in sweeping terms, that where no military emergency prevents the civilian courts from operating, military courts are unconstitutional.

Justice Stevens did not exactly oblige these critics in *Hamdan*, but he may have given them something better: Without overruling any of the World War II cases, he said that in important respects, they had been rendered inapplicable by changes in federal law and the international law of war. Further, he actually invoked these cases to bolster his arguments in light of those changes.

Affirming the Role of Congress

Hamdan was also a blow to the administration's broad assertion of presidential power. In presidential signing statements and other contexts, the Bush administration has repeatedly claimed that as Commander in Chief of the armed forces, the president has broad discretion to act in military matters.

That claim is partly right but mostly misleading. There is an important difference between, on the one hand, the president's power to act to defend the country where Congress has remained silent or authorized his action, and, on the other hand, the president's attempts to act in a manner contrary to congressional mandate. In the latter case, Supreme Court case law has repeatedly made clear, the president cannot act contrary to a valid enactment of Congress.[25]

In both the lead opinion of Justice Stevens and the concurring opinion of Justice Kennedy, the *Hamdan* Court reaffirmed this bedrock principle. The Constitution expressly grants to Congress numerous powers over the conduct of war and the armed forces. Accordingly, the Court ruled, the president's status as Commander in Chief gives him no authority to contravene the UCMJ or the international law of war that it incorporates.

Thus, *Hamdan* must be understood as having not all that much to do with individual rights, and everything to do with separation of powers. As both Justice Kennedy and Justice Breyer emphasized in their respective concurring opinions, if the President truly needed the powers he asserted in *Hamdan*,

[23] *In Re Yamashita*, 327 U.S. 1 (1946).

[24] *Ex Parte Milligan*, 71 U.S. 2 (1866).

[25] The leading precedent is *Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952), commonly called "the Steel Seizure Case."

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Congress could give them to him. And indeed, Congress did just that a few months later when it enacted the MCA.

The Applicability of the Geneva Conventions

The *Hamdan* Court (including Justice Kennedy on this point) found the Geneva Conventions' requirement that enemy detainees be tried, if at all, by tribunals equivalent to civilian courts or regular courts martial applicable to alleged al Qaeda members. Although not directly relevant to the *Hamdan* case itself, that determination might have had grave collateral consequences for military and Central Intelligence Agency (CIA) personnel who have used extreme methods of interrogation on captives, were it not for the fact that the MCA, enacted several months after *Hamdan*, provides partial immunity to U.S. personnel for past breaches. The precise scope of that immunity remains uncertain, however, and so *Hamdan* retains importance on this point, insofar as it provides a window into the thinking of a majority of the Supreme Court.

Common Article 3 also requires that detainees "shall in all cases be treated humanely." This provision certainly bans torture and equally certainly bans some forms of interrogation—such as "waterboarding," which simulates the experience of drowning—that the administration is widely believed to have authorized under the assumption that the Geneva Conventions do not apply. As Justice Kennedy stated straightforwardly, yet potentially ominously for the administration: "By Act of Congress . . . violations of Common Article 3 are considered 'war crimes,' punishable as federal offenses, when committed by or against United States nationals and military personnel," and "there should be no doubt . . . that Common Article 3 is part of the law of war as that term is used in" the UCMJ.[26]

Indefinite Detention Remains an Option

In the wake of *Hamdan*, some human rights organizations and countries whose nationals were being held (and, as of this writing, continue to be held) at Guantanamo Bay seized upon the ruling as grounds for the administration to close the prison there, an option that even President Bush has on occasion stated he would like to pursue.[27]

Yet the *Hamdan* ruling in no way casts doubt on the ability of the government to detain alleged enemy combatants at Guantanamo. The majority conceded that persons who have fairly been determined to be enemy combatants can be held as long as hostilities last. Given the continuing conflict in Afghanistan, not to mention the broader "war on terror," that means the Guantanamo Bay prison can remain open for business.

[26] *Hamdan*, 126 S. Ct. at 2802 (Kennedy, J., concurring in part).

[27] See Linda Greenhouse, "The Ruling on Tribunals: The Overview; Justices, 5-3, Broadly Reject Bush Plan to Try Detainees," *The New York Times*, 30 June 2006.

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Thus, for civil libertarians *Hamdan* may seem worse than a pyrrhic victory. It says that the government cannot put detainees on trial because the military commissions as originally established were defective, but the ruling allows detainees to be held without trial indefinitely. Such a "victory" takes detainees out of the frying pan and throws them into the fire. Perhaps the most that can be said in this regard is that the *Hamdan* ruling adds to the moral authority of those who want to see the Guantanamo Bay prison closed.

The Secret Prison Alternative

Even before enactment of the MCA, the administration may have had at its disposal a ready means to circumvent the *Hamdan* ruling. It could simply have moved the Guantanamo Bay prisoners to another, perhaps secret, site. After all, the *Rasul* Court's determination that federal courts had jurisdiction over habeas corpus petitions filed by aliens held at Guantanamo Bay was based in part on the justices' refusal to apply the presumption that statutes lack extraterritorial effect: because the United States exercised sovereignty in all but name over Guantanamo Bay, they said, application of the habeas statute to petitions originating there did not count as extraterritorial.

Suppose, then, that the administration moved the Guantanamo Bay detainees to a prison in a friendly eastern European or central Asian country. Might the presumption against extraterritoriality *then* bar the filing of a habeas petition? The *Rasul* case leaves this possibility open.

Accordingly, and again, even without the congressional assistance it received in the MCA, the administration could find a way to try captives by military commission abroad in manifest violation of the *Hamdan* ruling, because the courts, having no jurisdiction, would be powerless to stop such trials. In fact, however, two events have made this option unlikely, at least in the short run. First, the passage of the MCA probably renders the use of other sites unnecessary. Second, rather than moving Guantanamo Bay detainees to other sites, in early September, the Bush administration announced that it was doing just the opposite, moving fourteen detainees from secret CIA prisons to Guantanamo Bay for trial by military commission.[28]

The Precariousness of the Hamdan *Majority*

The *Hamdan* case was decided by a 5-3 margin, but it is quite clear that if Chief Justice Roberts had not been recused, he would have voted with the dissenters. After all, he voted against Hamdan's claims as an appellate court judge. Thus, going forward, the case should be regarded as resting on a single vote.

[28] See Sheryl Gay Stolberg, "Threats and Responses: The Overview; President Moves 14 Held in Secret to Guantanamo," *The New York Times*, 7 September 2006.

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Justice Stevens, the author of *Hamdan*, is eighty-six, and though he appears to be in remarkably good shape, rumors of his imminent retirement inevitably circulate. To be sure, even if one of the justices in the *Hamdan* majority should retire in the near future, one or more of the dissenters might choose to leave the result in place out of respect for precedent, at least to the extent that the MCA does not supersede it. But on the broader question of how to understand the Constitution's allocation of power between the president and Congress, there is no reason to think that any of the *Hamdan* dissenters would soften his pro-president view.

We may rightly regard *Hamdan* as a victory for the principle of checks and balances, even if, as an immediate practical matter, it will have little impact in light of the MCA. If the Supreme Court's point in *Hamdan* was that the president cannot establish military commissions without congressional approval, subsequent congressional approval does not show that the Court was wrong; it shows instead that Congress, finally, took some responsibility for the treatment of detainees.

Yet even conceived as a victory for the principle of checks and balances, *Hamdan* will not necessarily prove a lasting victory. Whether it does will depend very much on how seriously the Senate takes that very principle if and when it next confronts a Supreme Court nominee with a commitment to broad presidential power.

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Is America a Christian Nation?

HUGH HECLO

There are no guarantees, but sometimes research actually can help us think more clearly about hot political topics. Recent research studies show that religious polarization in the American electorate is real and important, but not all-important. The nation's overall religious cleavages have remained largely unchanged for at least the past quarter century. Politically and religiously speaking, it is the vast and moderate middle that continues to hold ultimate power. This is true even when one includes conservative Protestants in the picture.[1]

Polarization in Republican/Democratic voting has, however, grown at the far ends of the spectrum, where Americans are either extremely "religious" or extremely "non-religious" (as defined in terms of regular attendance at religious services). This is not because masses of Americans have been becoming religiously and politically polarized. It is because the choices presented by party activists in recent years have been more effective in sorting fervent religious and secular believers into opposing party camps.[2] Though the vast moderate middle holds ultimate power, these extremes hold immediate rhetorical power. In these opposing minorities are the managers and shock troops of the culture wars. Our public talk is now infested with scary claims and counterclaims. Godless secularists are threatening to destroy our Christian nation, while theocracy-minded Christianists are threatening to destroy our secular republic.[3] What is a citizen to think?

[1] These and other reality checks on exaggerated claims about the Christian right's impact on election outcomes are contained in Andrew Greeley and Michael Hout, *The Truth about Conservative Christians: What They Think and What They Believe* (Chicago, IL: University of Chicago Press, 2006), 39–68 and E.J. Dionne, Jr., David Brady, and Pietro Nivola, eds., *Red and Blue Nation: Characteristics and Causes of America's Polarized Politics* (Washington DC: Brookings, 2006).

[2] Morris P. Fiorina, *Culture War? The Myth of a Polarized America* (New York: Person, 2006), 130–132, 179–181.

[3] The battle cry for Christians to mount the barricades against secular humanists can be found throughout the media of the evangelical subculture, as in any number of products supported by the

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If we look below the surface of publicists' self-serving hyperbole on this subject, what we mainly find are politicians and activists *using* religion, not religious conflicts driving our politics. Few Americans care about the venerable religious differences over Christology, the means of salvation, infant baptism, and the like. Christian Americans, and even conservative white Protestant Christian Americans, are a many-splintered thing, but they can be organized as "values voters" (subtext: everyone else lacks values?). That work is done by professional political managers who are adept at such organizing and manipulation. Conservative culture activists are not busying themselves in simply upholding the Christian tradition, which, by Biblical standards, would have to give equal time to preaching against divorce, greed, fornication, and indifference to the poor. Likewise, liberal culture activists are not interested in understanding Christianity in its political dimensions. Activists on both sides of the culture war have a vested interest in misrepresentation. As Andrew Greeley and Michael Hout put it, "If they can puff up the otherness of the opposition, they can rally their base. And by exaggerating how strange the religious right is, demagogues can assure themselves that they will run afoul of very few real people." Typically, what is at issue in the political culture war is not religion but which side is more skilled in their demagoguery.[4]

We can expect politicians and political activists to sow confusion on major issues, especially around election time (which now seems to be all the time). But we should expect better from the professional keepers and transmitters of the American memory. The distinguished authors of a new American history textbook tell students that the United States "has never been a Christian nation." The equally distinguished history professor reviewing this textbook says that "on the contrary, the United States in its essence has always been a Christian nation, and this should be apparent to anyone with half a brain."[5]

Coral Ridge Ministries of Rev. D. James Kennedy. For examples of the recent hysterical fears from the secularist side, see Michelle Goldberg, *Kingdom Coming: The Rise of Christian Nationalism* (New York: W.W. Norton, 2006); Kevin Phillips, *American Theocracy* (New York: Viking, 2006); James Rudin, *The Baptizing of America: The Religious Right's Plans for the Rest of Us* (New York: Thunder's Mouth, 2006). A more thoughtful account is Damon Linker's *The Theocons* (New York: Doubleday, 2006).

[4] Greeley and Hout, *The Truth about Conservative Christians*, 66. For an account of Republican skill on this score, see Thomas B. Edsall, *Building Red America: The New Conservative Coalition and the Drive for Permanent Power* (New York: Basic Books, 2006). In pushback mode, political liberals have launched a vigorous counterattack for the "value voters." Michael Lerner, *The Left Hand of God: Taking Back Our Country From the Religious Right* (San Francisco, CA: HarperSanFrancisco, 2006); Bob Edgar, *Middle Church: Reclaiming the Moral Values of the Faithful Majority from the Religious Right* (New York: Simon and Schuster, 2006); and Obery M. Hendricks, Jr., *The Politics of Jesus: Rediscovering the True Revolutionary Nature of the Teachings of Jesus and How They Have Been Corrupted* (New York: Doubleday, 2006); Brian D. McLaren, *The Secret Message of Jesus: Uncovering the Truth that Could Change Everything* (Nashville, TN: W Publishing Group, 2006).

[5] David Edwin Harrell, Jr., Edwin S. Gaustad, John B. Boles, Sally Foreman Griffith, Randall M. Miller, and Randall Bennett Woods, *Unto a Good Land: A History of the American People* (Grand

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This is not much help for a generation that needs all the help it can get in trying to think straight about who we are and who we hope to be. The problem is not that someone doubting whether this is a Christian nation lacks half a brain. The problem is that in today's rabidly partisan conflicts, the average, historically clueless American is whiplashed from both sides with reckless claims about American nationhood, Christianity, and political agendas. Religious and secular partisans alike have a vested interest in drowning out any sensible consideration of the subject. The resulting disinformation is an invitation to thoroughly benighted public debate.

Then should we just drop the subject, relegating one more important but complex issue to the modern dark hole of "whatever"? We should not. Understanding the legitimate difficulties involved in addressing this question can offer deeper insights into the subject. The complexity is really an opportunity to gain a better perspective on our current condition, even if this means simply realizing that our contemporary uncertainties are nothing new. Younger Americans, in particular, need to learn the value of facing down the oversimplifications peddled by today's sloganeers in the public square. The message to them is, take care, but also take heart.

Is America a Christian nation? What follows can be thought of as seven answers in search of a better question.

To begin clearing the conceptual underbrush, and, hopefully, to give some comfort to the perplexed, we might start with what appears to be a moment of utter clarity—a declaration from the Supreme Court that "this is a Christian nation." It is one of the few Supreme Court decisions that today's religious right likes to cite in its campaign to "take back America for Christ." It is also a Supreme Court decision that these cultural warriors take quite out of context.

Putting the Question

It is nothing new for this nation of immigrants to be resentful toward immigrants. Following the Civil War, much of America's booming railway system in the West was being constructed by the hands and on the backs of Chinese workers. In 1885, Congress passed a law making it illegal for American employers to prepay the transportation costs or in any way assist the migration of any foreigner "to perform labor or service of any kind in the United States."[6] The main target of this legislation was the Chinese workers supposedly taking jobs from Americans. But the iron law of unintended consequences soon kicked in. By paying the costs to bring the English Reverend E. Walpole Warren to be its rector and pastor, the Holy Trinity Church of New York did exactly what

Rapids, MI: Eerdmans, 2005); reviewed by Bruce Kuklick, "Text Messages: Misplaced Priorities in the Teaching of American History," *Books and Culture* 12 (July/August 2006): 30–32.

[6] 23 *Stat.* 332, c. 164, 1885.

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this law forbade. Thus, the issue was, had this utterly respectable Christian church violated the law against immigration assistance?

When the case came before the Supreme Court, the justices had little trouble reaching a decision. After showing that Congress clearly intended the law to deal with "cheap, unskilled labor," the Court went on to argue that Congress could not possibly have intended this law to apply to American churches. The reason was that since "this is a religious people," no intended action against religion could be imputed to any piece of national or state legislation. Citing a mass of organic laws and cultural practices, the Supreme Court issued its unanimous decision in 1892, including a summary observation that "these, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation." That the Court's central argument is not about religion or Christianity but a common-sense approach to interpreting congressional intent is indicated in the ruling's final words:

> [The Congressional statute] ... is a case where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil; and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute.[7]

The author of the Court's decision was Justice David J. Brewer, the son of a Congregationalist missionary to Turkey and grandson of a New England Congregationalist minister. In later years, Brewer would go on in public addresses to reflect on the coming end of the nineteenth century and to offer hopeful predictions about the spread of Christianity in the new twentieth century.[8] He was a representative figure of the time, a full-fledged expression of a Protestant establishment that possessed dominant cultural authority. Brewer's identification of America as a Christian nation at the end of the nineteenth century prompted scarcely a ripple of public comment, because there was little need to explain what this claim might mean. It expressed an accepted truism. The truism was historic, demographic, and cultural in nature. America had been and was a nation composed mostly of Christians and, thus, a nation giving evidence of their beliefs. As a descriptive statement about the nation, it was factually accurate, and the Court decision presented an abundance of evidence to show that truth.

However, this Supreme Court decision was not identifying American nationhood with the Christian religion. Efforts of today's religious right to

[7] *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), accessed at www.supreme.justia.com, 7 June 2006.

[8] David J. Brewer, *The Twentieth Century from Another Viewpoint* (New York: F.H. Revell Co., 1899).

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exploit the *Holy Trinity Church* decision to that end are misleading, intentionally or otherwise. The point of Justice Brewer's discussion was to adduce evidence for a common-sense interpretation of the anti-immigrant assistance law. On behalf of the Court, he was pointing out that the people being represented in the legislature's passage of this law were, and had been from the beginning, a people self-declared to be Christian. Thus, it made no sense to think that Congress had passed a law intending to prohibit Christian churches from paying the travel costs of prominent religious leaders. Nor, as the Court decision said, would the nation's commitment to religious liberty permit an interpretation of the law as intending to outlaw travel assistance for rabbis or any other non-Christian religious leaders journeying to America to serve their flocks.

We have good grounds for judging what Brewer meant. He was not saying that America as a nation was created or exists for the sake of advancing the cause of the Christian religion. He was not saying that the nation should reflect solely the concerns and beliefs of Americans who are Christians. We can know these things because in a later 1905 book, Brewer made clear what he meant. There he emphasized that America is not a Christian nation in the sense that anyone should be compelled by the government to support Christian doctrines, or that every American was in fact or in name Christian, or that profession of Christianity should be a condition for being politically or socially recognized in American public life. More to the point, America being a Christian nation certainly did not mean that Christianity was a religion that should be established through state power. As he put it, "The government as a legal organization is independent of all religions."[9] America was a Christian nation because the people being represented in this nation's system of self-government were overwhelmingly if vaguely and diversely Christian. Therefore, the law in question cannot have been intended to prevent a Christian church from paying the ocean fare of an English cleric coming to America.

Fast forward a hundred plus years to today and it is obvious that even asking "Is America a Christian Nation?" amounts to something approaching fighting words. If today's Supreme Court produced such a ruling, we can be sure there would be much more than a ripple of public comment.

Accordingly, we can begin to appreciate how much the provocativeness of the question depends on the context of the times. The question being posed is politically provocative in our own times because we have reached a stage of contesting the fundamentals of knowing who we really are. This contest, identified in shorthand as the culture war, is not a struggle among ordinary, politically inactive Americans pondering their "we-ness." It is an ideological contest among America's public intellectuals and political activists. One side sees the rejection of America as a Christian nation to be a good thing, sig-

[9] David J. Brewer, *The United States: A Christian Nation*, first published in 1905 and republished in 1996 (Powder Springs, GA: American Vision Press, 1996).

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nifying intellectual openness and democratic inclusiveness. The other side sees it as a bad thing, signifying the loss of America's traditional identity and moral compass.

Underlying the views of both sides—and thus digging deeper the trench warfare—is the presupposition that America must be one thing or the other. America is or is not, was or was not, a Christian nation. This all-or-nothing thinking serves the partisan interests of today's religious and secular political activists alike, because both, oddly enough, are following the structure of the same well-worn script.

Politically active Christians on the conservative right typically claim that they are on the defensive against powerful secular forces undermining the religious character of our laws and culture. In a sense, the religionists' answer to our question is that America has been a Christian nation, but misguided people today are trying to change that.

By contrast, politically active secularists on the liberal left typically claim that they are on the defensive against an aggressive Christian conservative movement and its narrow-minded moralizing. In this sense, the secularists' answer to our question is that America is not a Christian nation, but misguided people are trying to change that.

Thus, the script presented by both religious and secular political activists seeks to claim possession of one of the most powerful of all political narratives—the story of decline, resistance, and restoration. Each side finds the other useful to keep the partisan juices pumping.

My purpose in asking *Is America a Christian Nation?* is not simply to talk about how one might "explore" the subject, but to work through the conceptual underbrush to actually answer the question. Academics often spend a great deal of time talking about how important it is to appreciate the complex and uncertain nature of a subject, savoring the tentativeness of any possible answer. Such intellectual carefulness is, of course, praiseworthy. But too often, our carefulness turns into an intellectual fussiness that never gets around to answering the question. Academics tend to forget that the objective in asking a question is not just to *seek* answers but actually to *find* them.

So what is the answer: Is America a Christian nation? The answer is: yes—no—no—no—sort of—sort of—and no way.

I begin with a premise: the Christian-ness being talked about in public debates is a variable, and it is the nature of a variable to vary. The applicability of the term *Christian* varies among the different domains in terms of which people can reasonably try to understand the word.

This is not post-modern relativism, where Christianity can mean anything we want it to mean. It is saying that one needs to be clear about the different contexts within which meanings of the term *Christian* are to be understood. The following discussion covers seven domains that are particularly relevant for talking about America as a Christian nation. The quality of the data, particularly from opinion surveys and sociological studies regarding Americans'

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deepest religious beliefs, leaves much to be desired (to put it mildly). While I would not fight hard to defend any given data point, I think the evidence I cite does indicate rough orders of magnitude in the direction of the conclusions I have tried to draw.

Christianity as Americans' Self-identification

The first domain to consider is relatively straightforward. Demographically speaking, how do Americans identify themselves religiously when asked?

In that context, at the beginning of the twenty-first century, over 80 percent of all adult Americans told pollsters they were Christians (down slightly from 89 percent in 1947, when this Gallup poll question was first posed). In a more comprehensive 2001 survey, when asked "What is your religion, if any?" 76 percent of adult Americans classified themselves as Christian (down from 86 percent in 1990).[10] Those identifying with non-Christian religious groups made up 3.7 percent of the adult population. At the same time, 14 percent did not subscribe to any religious identification; in other words, 29 million out of 208 million adult Americans in 2001 fell into the self-professed category of "no religion" (with a final 5 percent refusing to answer the question).[11]

In this context of dominant Christian self-identification, about nine out of ten adult Americans say they never doubt the existence of God, and eight out of ten say prayer is an important part of their daily lives. These and similar statistics one might muster show a level of self-identified Christianity far above that of other developed nations. Large majorities of Americans report that their religious faith is very important in their life and describe themselves as "deeply spiritual." Even among the minority of Americans reporting "no religion," a majority say they believe in a personal god and/or that the Bible was divinely inspired.[12]

If one pushes harder on admittedly soft data to ask, do Americans view their outlook on life to be essentially religious or secular, the self-professed religious orientation in today's America remains dominant. In 2001, 37 percent were clear-cut in regarding their outlook as "religious," and only 10 per-

[10] Summary estimates are given by Gregg Esterbrook, "Religion in America: The New Ecumenicalism," *Brookings Review* 20 (Winter 2002): 45–48. More-detailed studies of Americans' religious self identification are in the 1990 *National Survey of Religious Identification* conducted by Barry A. Kosmin, Seynour P. Lachman, and associates at the Graduate School of the City University of New York, which was followed by their 2001 *American Religious Identity Survey*, accessed at www.gc.cuny.edu, 13 June 2006.

[11] Only 2 million of 208 million adult Americans stated their beliefs to be atheist, agnostic, humanist, or secular. The other 27.5 million in the "no religion" category could not or would not identify themselves with any religion by name. *American Religious Identity Survey*, 2001.

[12] George Barna, "Seven Paradoxes Regarding America's Faith, 17 December 2002, accessed on the website of Barna Research Online at www.barna.org, 8 June 2006.

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cent equally clear-cut in regarding their outlook as "secular." Another 38 percent of Americans described their outlook as "somewhat religious" and only 6 percent as "somewhat secular" (9 percent either said they did not know or refused to answer).[13]

At this point, it is not fair to continue torturing the data. Generally speaking, in a world at the beginning of the twenty-first century that is one-third Christian, one-fifth Muslim, one-sixth nonreligious, and one-seventh Hindu, the United States clearly falls in the statistically Christian family of nations.[14] What Brewer observed a hundred years ago remains true today: Americans think of themselves as religious, and in being religious, they think of themselves as predominantly Christian. So yes, in the domain of demographic self-identification, America is a Christian nation.

Christianity as Americans' Source of Moral Guidance

Beyond their religious self-identification, there is the matter of Americans' reliance on the Christian religion for moral guidance. How do Americans regard the relevance of Christianity to their everyday lives?

Although roughly four-fifths of American adults identify themselves as Christians, only 45 percent of Americans strongly agree that the Christian faith is relevant to their lives these days. Only about one-fourth of Americans say they base their own moral decision making primarily on the principles and teachings of their religion. This average 25 percent applies to attendees of mainline Protestant churches. For self-professed Catholics, it drops to 16 percent. Even among "born-again" Christians, only 40 percent say they rely on Biblical or church teachings as their primary source of moral guidance. Where, then, do most Americans look for moral guidance? Mainly, it seems, they look to personal, utilitarian calculations. Slightly over six out of ten Americans report that their moral guidance comes from considering what will bring the most pleasing results to themselves or other persons.[15]

A similarly modest view of the claims of the Christian religion appears in responses to questions about Americans' views of success in their personal lives. When asked how they define a successful life for themselves, almost 60 percent of American adults give priority to a healthy family life or some tangible accomplishment such as financial or education goals. Another 14 percent point first to various kinds of emotional fulfillment (a prestigious job, a sense of satisfaction with life). Only 7 percent of Americans view spiritual wholeness and development as the first factor defining a successful life. This is about the

[13] Exhibit 3, *American Religious Identity Survey.*

[14] David B. Barrett, et al., eds. *World Christian Encyclopedia: A Comparative Survey of Churches and Religions in the Modern World*, 2nd ed. (Oxford, UK: Oxford University Press, 2001).

[15] George Barna, "Practical Outcomes Replace Biblical Principles as the Moral Standard," 10 September 2001, accessed at Barna Research Online, 8 June 2006.

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same proportion of Americans who define successful living as a matter of enjoying good physical health.[16]

Hence, while roughly four out of five Americans identify themselves as Christians, most also appear rather lukewarm about this religion's relevance to their daily lives. Only 42 percent of Americans say they are absolutely committed to the Christian faith. If polls are to be believed, 38 percent of Americans say they have confessed their sins and accepted Christ as their savior, but a majority of all Americans (60 percent) say they think there is no single religion that has all the answers to life's questions.[17] When survey questions put the word "Bible" in the question and ask if there are absolute moral truths applicable to all people and times, most Americans (68 percent) agree. But when asked without the "Bible" prompt in the pollster's question, the vast majority (78 percent) agree instead that moral truths are changeable depending on personal circumstances, or admit that they have never thought about the matter. Among "born-again" Christians—the presumably hard core of "fundamentalist" Christians—two-thirds say they do not believe there is such a thing as absolute moral truth.[18]

More-qualitative sociological studies in recent years point in the same general direction. Most Americans may identify themselves as Christians, but most Americans, and most American Christians, do not appear to submit to the Christian religion for authoritative moral guidance in their lives. Instead, the prevailing commitment in matters of ultimate significance is to the individual as judge of what is right and wrong for him or her, but never judgmentally in relation to others. The sociologist Alan Wolfe says this outlook has gained widespread currency since the 1960s and calls it the idea of "moral freedom." As he puts it, "The ultimate implication of the idea of moral freedom is not that people are created in the image of a higher authority. It is that any form of higher authority has to tailor its commandments to the needs of real people."[19] Wolfe's studies of middle-class Americans do not describe libertines who feel they are unbound by moral rules. If his studies are representative, most Americans believe that there is a difference between right and wrong and that there are standards by which a person should try to lead a good and meaningful life. The point is that each person is viewed as rightly deciding for himself what those moral standards are to be. On this basis, America is "one nation after all" regarding the agreed source of moral guidance. That source is the autonomous individual making choices in a condition of moral freedom and treating all views with equal respect.

[16] George Barna, "Family and Personal Accomplishments Lead People's List of Success Determinants," 6 November 2002, accessed at Barna Research Online, 8 June 2006.

[17] George Barna, *The Index of Leading Spiritual Indicators* (Dallas, TX: Word Publishing, 1996), 14.

[18] George Barna, "Americans Are Most Likely to Base Truth on Feelings," 12 February 2002, accessed at Barna Research Online, 10 July 2006.

[19] Alan Wolfe, "The Final Freedom," *The New York Times*, 18 March 2001. Wolfe's findings are elaborated in *One Nation, After All* (New York: Viking, 1998) and *Moral Freedom* (New York: W.W. Norton, 2001).

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So what shall we say? Is America a Christian Nation? No, not in the sense that a majority of Americans regard Christianity as the major force for guiding their moral decisions and defining success in their daily lives. In answering the question in this way, I do not think one is setting the bar unrealistically high. The issue here is not whether most Americans abide by the religion they profess (something that few adherents of any religion probably do very well). The issue is whether most Americans claim to be guided by the religion they profess. By self-report, the answer is negative. Most Americans may be well-meaning, kindly, and generally humane, but wanting to be or being nice does not translate into America being a Christian nation. At most, it amounts to an echo of the historical Christian religion sounding in the sentiments of people trying to be good while rejecting any moral authority superior to their own self-validating choices.

Americans' Belief in the Doctrines of Christianity

This third domain might be called the confessional standing of Americans as a Christian nation. I am not referring to the 2,500 or so separate Christian denominations in the country. I am talking about the core doctrinal content that unites Catholic, Protestant, and Orthodox churches into Christianity as such—the beliefs that make Christianity Christian rather than something else.[20] This is important for addressing our question, because of all the world religions, Christianity is inherently and fervently doctrinal in nature. It has been so from the beginning, that is to say, from the days of Paul, Peter, and the early disputes in the Jerusalem Council regarding the hold of Jewish law on gentile Christians.

This enormous emphasis on doctrine is not because Christianity is essentially a checklist of doctrines. It is because this religion's centerpiece is a very odd person, a person who in a key sense *is* the religion. The essence of Christianity's good news (i.e., its gospel) is that this fully human man Jesus was equally the only begotten son of God, that he died for believers' sins as foretold by the Jewish scriptures, that he was dead and buried, and that he was raised again by God his Father and was seen alive by his followers.[21] The fantastic claims and actions surrounding this peculiar person could not help but give rise to fundamental questions that demanded answers. In the early centuries of the Christian religion, these answers were being sought, not in the first instance by unbelievers, but by believers in Jesus, and not by believers who had touched and known the man, but by the following generations of Christians, who were going on and trusting in those earliest personal reports, which were gradually assembled into the text of the Bible's New Testament.

[20] See Ephraim Radner and George Sumner, eds. *The Rule of Faith: Scripture, Canon and Creed in a Critical Age* (Harrisburg, PA: Morehouse Publishing, 1998).

[21] In his letters to the young churches, Paul recounts the shorter version of this Gospel doctrine repeated by the first small congregations of Christian Jews, "that Christ died for our sins according to the scriptures; and that he was buried, and that he rose again the third day according to the scriptures . . . ." (I Corinthians 15:3-4).

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Doctrine emerged from addressing the questions any rational person (not the person of blind faith that the early Church fathers warned against) would have when confronted by these reports. How are we to understand this person in whom we are believing? How can God have a son? In what sense(s) was Jesus both God and human? How can it be just for God to kill Jesus Christ to pay for humans' sinfulness? What logic allows God to be one and three? Core doctrines of Christianity emerged along the horizon where the astonishing facts claimed by and about this person Jesus were translated so far as possible into intellectual terms for human understanding. To be sure, many doctrinal divisions among Christians could never be settled. But as Jaroslav Pelikan demonstrated through a lifetime of scholarship, the creedal core of the Christian tradition—"what the church of Jesus Christ believes, teaches and confesses on the basis of the Word of God"—remained remarkably constant over 2,000 years.[22] Nor is there today any lack of clear, straightforward explications of what this core thing called traditional Christianity is, however rich its forms of variation may be.[23]

If one assesses America as a Christian nation in light of belief in this venerable doctrine of the Christian tradition, the result is clear. Recent research is unanimous in concluding that far from affirming, much less understanding and delighting in their religion's doctrines, American Christians have very little idea of, or interest in, what that doctrine is. The sociologist Alan Wolfe, for example, has described how most of today's Americans live their faith in such a way that issues of doctrine and theology have virtually disappeared in favor of tolerance of divergent views.[24] To be sure, in comparison with secular Europe, Americans remain hyperactively religious. But their activity is little interested in seeking a God of theological truth, and very interested in seeking out a religious community that serves one's personal needs (both utilitarian and aesthetic). Where theological debates once raged, the hottest disputes are now typically over preferences for styles of worship music.

Scholars have sought various ways to describe this overall trend. One speaks of a "spirituality of seeking" replacing the "spirituality of dwelling" provided by traditional religion. Another sees competition in America's religious marketplace being won by self-expression values—"the pursuit of self-realization through personal quests for spiritual insight and fulfillment." A third describes the general trend of "shrinking transcendence." In this process, the "little transcendences" experienced by seekers of spirituality displace the "great transcendences" of salvational religion and its promise to bridge the divide between

[22] Jaroslav Pelikan, *Credo: Historical and Theological Guide to Creeds and Confessions of Faith in the Christian Tradition* (New Haven, CT: Yale University Press, 2003).

[23] See for example, C.S. Lewis, *Mere Christianity* (New York: HarperCollins, 2001); N.T Wright, *Simply Christian: Why Christianity Makes Sense* (San Franciso, CA: HarperSanfranciso, 2006); Joseph Ratzinger (Pope Benedict XVI), *Introduction to Christianity* (Fort Collins, CO: Ignatius Press, 2004).

[24] Alan Wolfe, *The Transformation of American Religion: How Americans Live Their Faith* (New York: Free Press, 2003). See, in particular, Luke Timothy Johnson, *The Creed: What Christians Believe and Why It Matters* (New York: Doubleday, 2003).

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God and man. A fourth speaks of Americans' "quiet faith" of religious individualism, whereby today's Americans focus on their personal needs rather than on submission to an outside power.[25] There are many things that might be said about this pervasive American devotion to personal spirituality. That it is Christian is not one of those things. None of it amounts to a commitment to traditional Christian doctrine as recognized for over two millennia.

To take some specific doctrinal issues, surveys of American public opinion make clear that Jesus has what is called a very high approval rating. However, about half of Americans believe Jesus sinned during his life on earth, a character fault that fits poorly with someone who was not only fully human but also fully God, as Christian doctrine has historically taught. Ninety percent of Americans say they own a Bible, and a large majority claim to know all of its basic teachings. But three-fourths of Americans also wrongly believe that the Bible teaches that God helps those who help themselves. Of those Americans who have a view on the subject, a majority believe that a person will earn salvation if he or she is generally good or does enough good things for others. In effect, a vague, triune view of salvation prevails, with entry to eternal heavenly life gained through three gates: by completing a critical mass of good deeds, by accepting God's grace through Jesus Christ, or by counting on God's love for all people. Three-quarters of Americans believe in the intrinsic goodness of human beings, thus denying the basic Christian doctrine of original sin and doing away with any plausible need for a savior to pay for their sins before a holy God. This muddled theology of salvation is not surprising, since about half of Americans who say they are Christians also say they believe that all religious faiths teach the same basic principles.[26] None of this corresponds to the authoritative teachings handed down through 2,000 years as to what the Christian religion has held to be true. It does, however, correspond to the ancient teaching that without knowledge of God and His perfections, man will seem good to himself.

The exact meaning of any of these statistics—not to mention the wording of polling questions—is obviously something one could debate at great length. The larger picture, however, seems clear enough. Americans are more inter-

[25] The references are, respectively, to Robert Wuthnow, *After Heaven: Spirituality in America Since the 1950s* (Berkeley: University of California Press, 1998), 1–18; Wayne Baker, *America's Crisis of Values* (Princeton, NJ: Princeton University Press, 2005), 57; Thomas Luckmann, "Shrinking Transcendence, Expanding Religion," *Sociological Analysis* 50 (1990): 126–128; Alan Wolfe, *Transformation of American Religion*, 37–66. Overviews of the movement from doctrinal faith to self-expressive spirituality are in Wade Clark Roof, *Spiritual Marketplace: Baby Boomers and the Remaking of American Religion* (Princeton, NJ: Princeton University Press, 1999); and James A. Herrick, *The Making of the New Spirituality* (Downers Grove, IL: InterVarsity Press, 2003).

[26] George Barna and Mark Hatch, *Boiling Point* (Ventura, CA: Regal Books, 2001), 190–193. On American views of human goodness as a denial of Christian doctrine, see the March 2000 poll results, "The Way We Live Now," discussed by Alan Wolfe in "The Pursuit of Autonomy," *The New York Times Magazine*, 7 May 2000.

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ested in having religious faith than in the doctrines that define the meaning of their faith. So while the overwhelming majority of Americans describe themselves as being seriously concerned about matters of "spirituality," exactly which spirit, saying what, is left open to one's personal preferences. Since the concern with spirituality is essentially self-referential, the odds are stacked against any spirit claiming to impose obligations from outside yourself, as you yourself choose to define these duties.

So: Is America a Christian nation? In terms of knowledgeable creedal commitments to this religion, the answer is no.

Nor should this be surprising. A noncreedal Christianity fits very well with the larger American culture that endorses individual choice, tolerance of different truths, and distrust of anyone's party line about what morality ought to be. Reciting the traditional Christian creed at a worship service, and really meaning it, is a countercultural act.

American social scientists have pointed out the advantages for civic life of Americans' noncreedal Christianity. Again, for example, Alan Wolfe commends modern Americans' approach to religious faith because "the more we refrain from treating religion as if it has some status that makes it different from everything else in the world ... the greater our chances of avoiding religion's ugly legacies while still being able to appreciate its benefits for the individuals who practice it and the democratic society they inhabit. ... Believers who prefer a God of love to a God of truth are not going to kill for their beliefs or to give their support to those who do."[27]

Such observations may be true of religion in general, but from its earliest beginnings, Christian doctrine has said nothing about killing for its beliefs. From Calvary onward, it has said a very great deal about suffering and dying for its beliefs. Restraining American Christians from killing nonbelievers is hardly the issue. If we are to assess America as a Christian nation, the more relevant issue is whether Americans behave like a people who are committed to the Christian religion. If Christianity is not something "different from everything else in the world," then never mind killing for it—such a religion clearly cannot be held by its believers to be something worth living for, much less dying for. This brings us to the behavioral domain concerning America as a Christian nation.

Christianity as Expressed in Americans' Behavior

In a fourth sphere, we come to matters of conduct, the area where Christian Scripture commands believers to be not only hearers but also doers of the word, a people known by their fruits.

Obviously, there are many types of virtuous behavior that might be more or less indirectly associated with America being a Christian nation. Among

[27] Wolfe, *The Transformation of American Religion.*

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developed nations for which we have such data, Americans tend to stand out in terms of giving to charities, volunteering for civic good works, and the like. But clearly, statistics on churchgoing are the most well-known and relevant behavioral measure that sets the religiosity of Americans apart from that of other developed nations. Indeed, for decades it has been taken as one of the key markers of American exceptionalism.[28] In terms of attending organized religious services (i.e., at times outside popular religious holidays), polls repeatedly show that about 40 percent of Americans report attending a worship service in the previous week. Given the demographics noted earlier, most of these are obviously Christian worship services. Thus, while most Americans identifying themselves as Christians may not appear "well churched"—in the sense of being under the doctrinal teaching of their religion's tradition—a very large minority appear quite "churchy" in the sense of regularly attending houses of worship.

However, closer examination indicates that this self-reported churchgoing is often—probably over half of the time—a lie. According to independent validation by head counts, time diaries, and the like, the percent of Americans actually attending any place of worship in the previous week is probably closer to 20 percent rather than the widely publicized and self-reported figure of 40 percent. The over-reporting appears to be greatest among committed believers and active church members. A particularly careful case study of one well-established suburban evangelical church in the deep South showed a 59 percent rate of attendance over-reporting in 1996, not by the general public but by *church members.* If one assumes that by "attending church" in the last week respondents meant attending their church's actual worship service (versus social affairs, committee meetings, etc.), the over-reporting/lying rate was 83 percent. The rate of over-reporting for Sunday School attendance was 57 percent.[29]

In terms of behavior that significantly affects the pocketbook, approximately 17 percent of adult Americans claim to have tithed to churches and related ministries in the past year, but again, there is evidence of Americans bearing false witness to their pollster. A study of financial records showed that two-thirds of these people were lying about their financial giving and the actual figure was closer to 6 percent. For regular church attendees as well as "born again" Christians claiming to tithe, the rate of false claims was about 63 percent.[30] Along the same lines, 92 percent of American households are said

[28] See Seymour Martin Lipset, *American Exceptionalism* (New York: W.W. Norton, 1996).

[29] See Andrew Walsh, "Church, Lies and Polling Data," *Religion in the News*, 1 (Fall 1998): 1–8; and Penny Long Marier and C. Kirk Hadaway, "Testing the Attendance Gap in a Conservative Church," *Sociology of Religion* 60 (Summer 1999): 175–187.

[30] See Randy Alcorn, *Money, Possessions and Eternity* (Wheaton, IL: Tyndale House, 2003); and Barna, "Practical Outcomes."

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to own at least one copy of the Christian Bible, but only about one-third of adults say they read their Bible (outside church services) during the week.[31] Given the rate of Americans' false reporting about churchgoing and tithing, it is fair to surmise that the actual proportion of Bible readers is a small minority of Americans.

The data on behavior outside church walls is especially difficult to gather, but it all points in essentially the same direction. A recent review of evidence from a wide variety of sources concludes that not only American Christians in general but also born-again evangelicals "are as likely to embrace lifestyles that are every bit as hedonistic, materialistic, self-centered, and secularly immoral as the world in general."[32] It is important to note that the terms *born again* and *evangelical* designate those whom the larger culture would generally regard as the most traditional and fundamentalist Christians. One researcher identifies "born again" Christians as those who say they have made a personal commitment to Jesus Christ that remains important in their lives and believe they will go to heaven because they have confessed their sins and accepted Christ as their savior. In 2006, 45 percent of American adults made such a declaration to a pollster, while a much smaller subset of the born again—9 percent of American adults—meet the researcher's stricter criteria for being "evangelical."[33] In either case, the distinguished evangelical preacher and Bible expositor James Montgomery Boice presumably knew his co-religionists as well as anybody. Shortly before his death, Boice observed in 1996 that "the sad truth is that they [evangelicals] perhaps even more than others have sold out to individualism, relativism, materialism and emotionalism, all of which are the norm for the majority of evangelical church services today. Evangelicals may be the most worldly people in America."[34]

If such observations apply to the "hard core" of American Christians, what shall we say about the characteristics of America as a Christian nation in a more general cultural sense? By any reasonable conception of what might constitute a Christian nation, the general American population exhibits behavior pointing in exactly the opposite direction. In recent decades, American popular culture has moved toward the widespread acceptance of behaviors never associated with Christianity—gambling, public lewdness, foul language, mass consumption of pornography, and the like. For example, in the last quarter of the twentieth

[31] Barna, *Index of Leading Spiritual Indicators*, 55.

[32] Michael Horton, quoted in a general review of the evidence presented by Ronald J. Sider, "The Scandal of the Evangelical Conscience," *Books and Culture* 11 (January/February 2005): 8–9, 39.

[33] In Barna's research, those classified as "evangelicals" meet the "born again" criteria and, in addition, affirm seven other beliefs (e.g., that one has a responsibility to share the gospel with non-Christians, that Satan exists, that eternal salvation is possible only through God's grace and not one's works, that Jesus lived a sinless life on earth, and that the Bible is accurate in all that it teaches.) George Barna, "The State of the Church: 2006," accessed at Barna Research Online, 13 June 2006.

[34] James Montgomery Boice, *Two Cities, Two Loves: Christian Responsibility in a Crumbling Culture* (Downers Grove, IL: InterVarsity Press, 1996), 28.

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century, legalized gambling changed from an isolated and rare phenomenon to a pervasive activity. At the end of the century, 68 percent of adults reported gambling in the past twelve months (1998), losing $50 billion in legal gambling.[35] Gross gambling revenues (amounts wagered minus winnings returned to players) rose from about $1 billion in 1980 to over $78 billion in 2004. Only two states now lack some form of legalized "gaming," an activity confined to criminal enterprises only a generation ago but today a significant funding source for state and local governments. In 2004, 80 percent of adults viewed casino gambling as an acceptable activity for themselves or others, 76 percent viewed casinos as an important part of a community's entertainment and tourism options, and slightly over a quarter of adult Americans went to gambling casinos the previous year.[36]

To take another perhaps too-obvious example, one estimate is that Americans now annually spend more on pornographic activities—oddly enough known as "adult entertainment"—than on professional football, baseball, and basketball combined, or something roughly equivalent to Hollywood's total box office receipts in the nation. American spending in strip clubs exceeds the combined revenue of Broadway theaters, regional and nonprofit theaters, and symphony orchestra performances. The $12 billion in annual revenues from Internet online pornography now equals the combined annual revenue of the ABC, NBC, and CBS television networks. It is true that in recent years, the revenues of traditional commercial enterprises in the sex industry (such as magazines) have declined. However, this is because technology in the form of video tapes, cable and satellite TV, the Internet, and personal communication devices has allowed universal and discreet access to hard-core pornographic material. And vast numbers of Americans have responded with a huge demand for an ever-increasing and varied supply of such material. In the late 1980s, roughly 1,600 new hard-core adult videos were released to the market annually; by 2000, the number had reached 11,000. Beyond porn commerce, there has been an ever-increasing supply of amateur pornography, with some 300,000 websites at the beginning of the twenty-first century offering sexually explicit content for free. In 1998, there were 14 million individual pornographic webpages, and in 2004, there were some 420 million such webpages. The growth of wireless cell phone media tells the same story. By 2005, pornography already constituted half of the multimedia traffic carried by U.S. wireless operators from outside their own portals.[37]

[35] National Opinion Research Center, "Gambling Impact and Behavior Study" (report to the National Gambling Impact Study Commission, Washington DC, 1 April 1999), 6.

[36] American Gaming Association, *2004 State of the States: The AGA Survey of Casino Entertainment* (Washington DC: American Gaming Association, 2004), 17, 21, 23. See also www.americangaming.org/Industry/factsheets.

[37] The statistics on "adult entertainment" and the difficulty of their calculation are discussed in Eric Schlosser, *Reefer Madness: Sex, Drugs, and Cheap Labor in the American Black Market* (New York: Houghton Mifflin, 2002), 113, 267–68. More-detailed information is contained in Joseph W. Slade,

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A survey at the beginning of the twenty-first century found that 32 percent of men and 10 percent of women in the country had visited a sexually oriented website. That is no doubt a major underestimate if there is the same extent of lying on this subject as there is about church attendance and tithing. At the same time, the largest group of consumers of Internet pornography was the next generation of Americans, youths twelve to seventeen years of age. Another survey in 2000 by the evangelical magazine *Christianity Today* found that 27 percent of America's pastors said they had sought out pornography on the Internet, anywhere from "a few times a year" to "a couple of times a month or more."[38] Quite apart from pornography, since the mid-twentieth century, the crude sexual content of the general culture has grown beyond the bounds of any traditional Christian understanding of the sanctity of the human body.[39]

One is left with the obvious question: with a population that claims itself to be three-quarters to four-fifths Christian, who is making this popular culture popular? It is certainly not simply that remnant 14 percent of Americans claiming to have "no religion." It must be the overwhelming majority of nominal American Christians.

So back to the question: Is America a Christian nation? In the behavioral terms that go to make up the functioning everyday culture in this nation, no, the evidence simply does not support the charge. Again it might be claimed that I am setting too demanding a test. How many believers in any religion actually abide by that religion day in and day out in all aspects of their lives? I would not presume to know the answer, but that is not the issue here. The issue here is the overall behavioral tendencies, the main cultural drift of things produced by millions of Americans deciding to live one way or another. In this sense, there does not seem to be even a prima facie case for twenty-first-century America being a Christian nation.

Christianity in Americans' Political Institutions[40]

Given the cultural milieu of Protestant Christianity from which this nation originated, it would be extraordinarily strange if this religious background

Pornography and Sexual Representation: A Reference Guide (Westport, CT: Greenwood Press, 2000). On adult video releases, see charts from *Adult Video News*, accessed at www.pbs.org/wgbh/pages/frontline/shows/porn/business, 20 August 2006. On the extent and usage of pornography on the Internet, see The Third Way Culture Project, *The Porn Standard: Children and Pornography on the Internet* (Washington DC: The Third Way Culture Project, 2005), 1–25.

[38] These other relevant polls are cited in Schlosser, *Reefer Madness*, 179–180. Information on young consumers of Internet pornography is from *The Porn Standard*, 3.

[39] Peter Brown, *The Body and Society: Men, Women and Sexual Renunciation in Early Christianity* (New York: Columbia University Press, 1988).

[40] Arguments in this section regarding political institutions and in the next section regarding the American political ethos are spelled out at much greater length in Hugh Heclo, *Christianity and American Democracy* (Cambridge, MA: Harvard University Press, 2007), 7–34.

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had *not* left a significant imprint on the legal/institutional arrangements constituting American nationhood. As we shall see shortly, Christian precepts were embedded in the common law and often enforced through civil authorities, as in laws respecting the Christian Sunday Sabbath, blasphemy, and the like. However, this is not to say that U.S. political institutions and measures for the rule of law were created and developed for the sake of advancing Christianity as such or that the system of self-government was framed to represent only Christian interests. It is to say that Americans' constitutive political thinking was necessarily entwined with strands of Christian thinking. And nowhere was that more evident than in the institutional thinking about church–state relations.

Thus, in trying to understand democracy in America, Alexis de Tocqueville laid great emphasis on the influence of the English Puritan colonies of New England. Theirs was more than a passing regional or historical presence. De Tocqueville argued that the foundation of Puritan principles—fervent Christian piety, democratic self-government, and republican freedom—spread its influence to gradually enlighten "the whole American world."[41] De Tocqueville considered this a monumental achievement. It overturned the dominant European mind-set. A vibrant Christianity and democratic freedom could be mutually supportive, not contradictory to each other. Even New England's "puritanical" laws criminalizing immoral conduct carried the seeds of freedom and self-government, because these were laws voted by the free agreement of self-governing communities of citizens.

However, the Christian influence cut deeper into the institutional template of America than issues of congregational self-government among equals. It went to the fundamental issue of individual religious liberty, the ground for all other liberties. As a patchwork of colonies, America began life as a seventeenth-century remnant of European "Christendom," a term denoting centuries of close, mutual ties of power between Western Europe's religious and civil rulers. English colonists in the New World found themselves wedged precariously between powerful versions of that ideal of Christendom, with the Spanish to the south, the French to the north, both nations claiming vast areas to the west, and a weaker version of Christendom in the mother country's official Church of the England across the Atlantic to the east.

The key point here is that before the colonists were Americans, they were, in a culturally pervasive way, Protestant dissenters. Understood historically, this term means more than merely someone who dissents or protests. Dissenters were dissenters because they were first of all affirmers. In the religious history out of which America emerged, Puritan dissenters affirmed what they claimed to be a purified Christianity. Theirs was a Christianity whose truth claims did not depend on traditional intervening church–state structures but on the Bible's

[41] Alexis de Tocqueville, *Democracy in America*, J.P. Mayer and Max Lerner, eds., George Lawrence, trans. (New York: Harper and Row, 1966), 29, 30, 36–40.

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truths shown forth through the Holy Spirit to individual believers in voluntary association with each other.

Certainly America's Puritan forefathers were not religiously tolerant as we would understand that concept today. The struggle over the place of official religion in America's laws and institutions was long and complex.[42] The essential point for our purposes is that by the time American independence was won, it was the Protestant dissenting mentality that had prevailed. The clarion call of dissenters as a religious people building the institutions of the American state can be characterized as "no preference and no penalty." Christian belief, to be authentic, had to exist without the helping hand of state power—no establishment of religion. And Christian belief, to be authentic, also had to exist without the threatening frown of state power—free exercise of religion. And so it was that we ended up with a First Amendment in the Bill of Rights that says the things it says: "Congress shall make no law respecting an establishment of religion"—no preference—"nor prohibiting the free exercise thereof"—no penalty. American politics was liberated to be religiously moralistic precisely because the government was prohibited from involving itself in the higher matters of theological doctrine and sectarian differences.

The dominance of this Christian, dissenting Protestant way of thinking (first at the national level and with time at the state government level) explains why there is no contradiction between two official proclamations now being used in the culture wars. As noted at the beginning, the Supreme Court in 1892 declared "this is a Christian nation." Almost a hundred years earlier, the very Christian President John Adams signed and U.S. Senators (founding fathers all) approved a treaty with the Muslim powers of Tripoli stating:

> As the government of the United States of America is not in any sense founded on the Christian religion—as it has in itself no character of enmity against the laws, religion or tranquility of Moslems—and as the said States never have entered into any war or act of hostility against any Mehomitan nation, it is declared by the parties that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two countries.[43]

The treaty's reference is to the "government" of the United States, not the people, and this observation takes us back to the essential point. Christianity was not established by law as the legal religion of the state, but it was the religion of the people. Far from these two facts being contradictory, they

[42] In addition to John Noonan's work cited below, see Thomas E. Buckley, *Church and State in Revolutionary Virginia, 1776-1787* (Charlottesville: University Press of Virginia, 1977); William Lee Miller, *The First Liberty: Religion and the American Republic* (New York: Knopf, 1986); Leonard W. Levy, *The Establishment Clause: Religion and the First Amendment* (New York: Macmillan, 1986); and Michael McConnell, "The Origins and Historical Understanding of Free Exercise of Religion," *Harvard Law Review* 103 (May 1990): 1409–1517.

[43] Cited in Frank Lambert, *The Founding Fathers and the Place of Religion in America* (Princeton, NJ: Princeton University Press, 2003), 239.

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were logically connected. Insofar as institutional separation of church and state in America was based on principle (and not just a practical necessity in the religiously pluralistic colonies), it was more a product of Christian thinking than of any secular or deist Enlightenment philosophy (which was at best confined to small elite circles in the colonies).[44] Following from John Locke, Roger Williams, and others, in a more or less straight line through to James Madison's Virginia Remonstrance against Patrick Henry's proposal for state taxes to support religious education, and on to the drafting of the Constitution's First Amendment, the restraint on government for the sake of religious liberty was a religious and a Christian argument. Religious liberty was anchored in a deep appreciation of transcendent duty. It was man's duty to his Creator that produced the individual's inalienable right to freedom of conscience over against secular powers.[45] It is not too much to say that from this flowed the sensibility to all the other rights of life, liberty, and the pursuit of happiness that perceptive foreigners came to call the "American Creed." This same fountainhead has done much to feed the modern emphasis on individual choice as its own self-justifying norm and a cultural end in itself, but that subject is not the issue here. The larger point is that the way to the American Creed and its associated political institutions passed through Christianity, not secularism.

Is American a Christian nation? Its legal and institutional structures vigorously deny any such official endorsement, but in so doing, these structures are also drawing heavily on the deep capital of the nation's dissenting Protestant

[44] John T. Noonan, Jr., *The Lustre of Our Country: The American Experience of Religious Freedom* (Berkeley: University of California Press, 1998).

[45] On this score, it is worth repeating what Madison's 1785 petition, a promissory note on what would later appear in the Constitution's Bill of Rights, actually said. "We remonstrate against the said Bill, 1. Because we hold it for a fundamental and undeniable truth, that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence. The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty toward the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance." James Madison, "A Memorial and Remonstrance," June 1785 in John T. Noonan, Jr. and Edward McGlynn Gaffney, Jr., eds., *Religious Freedom: History, Cases, and Other Materials on the Interaction of Religion and Government* (New York: Foundation Press, 2001), 173. See also more generally, Merrill D. Peterson and Robert C. Vaughan, eds., *The Virginia Statute for Religious Freedom: Its Evolution and Consequences in American History* (New York: Cambridge University Press, 1988).

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Christian heritage. In this rather backhanded way, America is a Christian nation, "sort of."

Christianity and Americans' Political Ethos

A sixth domain for addressing America as a Christian nation focuses not on demographic identities, religious doctrine, behavior, institutional arrangements, and the like, but on something more intangible—the political ethos of the nation. This term *ethos* tries to capture something that is obviously elusive. But it is not therefore anything less real and is possibly even more important because of its very taken-for-grantedness. A political ethos is the persisting tone of public affairs, their moral and aesthetic style and mood.[46] A people's ethos is their evaluative stance, a common "attitude" in enacting their public life.

As talk of culture wars began to grow in the early 1980s, three notable historians of American religion (themselves Christians) investigated the claims of the religious right that America at its founding was a Christian nation that had changed under the pressures of modern secular humanism. The conclusion of these scholars was to challenge and moderate the premise. In its founding era, the American nation was not predominately Christian in any theologically rigorous or evangelical meaning of that term, but the American character was generally religious in a vaguely Christian sense.[47] In other words, anyone seeking an accurate historical understanding of America as a Christian nation really should feel obliged to abandon all-or-nothing thinking and be willing to live with some inherent ambivalence.

It is certainly true that a desire to protect and advance the Christian faith was stated as a primary goal in the early English settlements of America (e.g., the charters of Virginia, 1606, 1609, 1611; New England, 1620; Massachusetts Bay, 1629, 1691; Maryland, 1633; Rhode Island and Carolina, 1663). Likewise, after the Revolution of 1776, constitutions of the original U.S. states typically gave direct recognition to the Christian religion—sometimes authorizing public funds to support public worship and Christian educational institutions (e.g., Massachusetts, Connecticut, New Hampshire, Maryland)—sometimes making profession of Christianity or Protestantism a condition for holding public office (e.g., Pennsylvania, Delaware, New Hampshire, North and South Carolina, New Jersey, Massachusetts, Connecticut, Vermont, Maryland). And invariably, state and local governments had laws and court interpretations of the common

[46] The anthropological contrast between a people's ethos and their worldview is drawn and illustrated in Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973).

[47] Mark Noll, George Marsden, and Nathan Hatch, *The Search for Christian America* (Westchester, IL: Crossways, 1983). The varied but essentially Christian outlook of America's founding fathers is updated and documented in James H. Hutson, *The Founders on Religion: A Book of Quotations* (Princeton, NJ: Princeton University Press, 2005); and David L. Holmes, *The Faith of the Founding Fathers* (New York: Oxford University Press, 2006).

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law that gave special protection to things held sacred by Christians, such as the sanctity of the Sunday Sabbath and marriage as well as prohibitions against public blasphemy.[48]

But it is also true that these official endorsements of Christianity were mostly hortatory and enforced with diminishing success in such a mobile, westward-pushing and fractious society. In the post-Civil War years one can continue to find a few official endorsements of Christianity in state constitutions and laws, but in doing so, one is really sifting for remnants. The long-term story has been one of the gradual abandonment of such direct endorsements. The Revolutionary War broke the hold of the Church of England establishment in Virginia and elsewhere; in Connecticut (1817) and Massachusetts (1833), the disestablishment of the Congregational "standing orders" brought the last official state churches to an end. Soon states such as New York were constitutionally enshrining the principle of the separation of church and state, largely to make a statement against the masses of new Catholic immigrants. Dismantling "anti-sin" legislation has been a longer term trend, and in doing so, Americans have typically appealed to that principle—the "sanctity" of the individual and his or her free choice—that dissenting Protestant Christians had themselves implanted in the culture. Current controversies over anti-sodomy laws and same-sex marriage are only the latest examples.

Working out the political implications of America's vaguely Christian heritage has been a long-term, complex project, and the residue is a distinctively American ethos. Precisely because the religiously inspired institutional separation of church and state was taking root by the time of the struggle for political independence, America's political culture in the decades after 1776 was set free to generate a vibrant intermixture of the people's religious views and their politics. As the European impulse to legislate theology and legally establish an official Christianity was set off-limits in America, the free play of competition in the religious and political marketplaces became not merely less dangerous to social order but positively inviting. Here, the strands of Christian and republican thinking in the young nation fit together nicely to produce a highly moralistic but safely non-theocratic attitude toward political life. On the one hand, the strong pull of Puritan and Protestant thinking more generally—where every mundane activity was to be regarded as co-extensive with serving and glorifying God—served to deny any separation between religious commitments and public activity. On the other hand, the nation's self-understanding of its political founding was premised on the mixture of moral reasoning and political action. Americans were continually reminded of this foundational patriotic heritage—they had become a people by launching a political revolution against their monarch precisely on the grounds that his laws and the actions of

[48] Many of the relevant provisions are catalogued in Brewer, *The United States: A Christian Nation*, 14–29. The consensus and controversy surrounding such provisions are discussed in Noonan and Gaffney, *Religious Freedom*, 201–253.

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his agents were morally reprehensible and a violation of God's natural order of human rights.

Sealing this non-separation of religion and politics was the common recognition that republican self-government required a virtuous citizenry and that this, in turn, required the moral underpinnings provided by religion in general and Christianity in particular. This pervasive view in America has been called the moral calculus of republicanism.[49] De Tocqueville in the 1830s was expressing what had become and remained the widely accepted view when he said that Christianity in America was the first of its political institutions. It had that status because this religion taught a democratic people the art of being free.[50]

Thus, for religious historians to say that the early American republic's character was generally religious and vaguely Christian is to say that this was a nation being built by people who mostly believed—however crude their Christian theology and behavior might be--that the temporal sphere of daily life was shot through with meaning of eternal, godly significance. A person, a citizen, was not understood to be inhabiting two separate realms of life, one religious-spiritual sphere separate from the world and another political-temporal sphere safely living in only the here and now. Neither was the political society to be understood in that dualistic way. The result is a public ethos that Americans take for granted and Europeans find, to various degrees, galling and laughable. It is moralistic and crusading, benevolent and providential. We can briefly consider each feature in turn.

Until well into the twentieth century, the moral energy propelling America's many social reform movements was primarily religious rather than secular. This applied to the anti-slavery and early women's movements, to prison and orphanage reform, to the "social gospel" seeking to apply moral norms to the new forces of industrialism, and to a series of "godly insurgencies" under the banner of Populism. The same ethos also fueled moral crusades against immigrants, mixing of the races, and various forms of "un-Americanism."[51]

Fortunately, the dark side of crusading moralism has always had to contend with what might be called the rule of benevolence in America's public ethos. This, too, was a residue of the nation's vaguely Christian heritage, and it flowed from the religious duty to seek the good of others. This Christian command for benevolence fit well with the idea of virtue in republicanism to seek the

[49] John G. West, *The Politics of Revelation and Reason: Religion and Civic Life in the New Nation* (University Press of Kansas, 1996); Mark A. Noll, *America's God: From Jonathan Edwards to Abraham Lincoln* (New York: Oxford University Press, 2000), 203.

[50] de Tocqueville, *Democracy in America*, 276, 269. While de Tocqueville frequently uses the generic term *religion*, he leaves no doubt that in relation to American democracy, it is Christianity to which he is referring; see, for example, 40, 265–277, 396.

[51] See James A. Marone, *Hellfire Nation: The Politics of Sin in American History* (New Haven, CT: Yale University Press, 2003); C. Howard Hopkins, *The Rise of the Social Gospel in American Protestantism, 1865-1915* (New Haven, CT: Yale University Press, 1940); Michael Kazin, *A Godly Hero: The Life of William Jennings Bryan* (New York: Knopf, 2006).

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common good, and both united to become deeply embedded in the approved attitude toward public life. Of course, this stance has opened up generations of reformers to charges of being hypocritical busybodies and do-gooders, though the participants have preferred to see themselves as "those who hunger and thirst after righteousness." But the force contained in such charges of hypocrisy is itself testimony to a deeply moralistic attitude toward public life—otherwise why not accept false-dealing as a natural feature of politics about which one should be sophisticated rather than complaining? In any event, the call to benevolence has been a powerful element of our political ethos. It has instilled in American public life an odd expectation. It is the expectation that rather than being merely powerful, smart, effective, and all the other attributes the world expects, one should in the first place be good.

At this point, we are brought into contact with a final feature of America's political ethos that I am calling providential. It is a sense that in enacting life on the political stage, Americans are engaged in aligning the nation (or misaligning it) with a larger, God-given moral order that lies beyond itself and a God-directed plan for history that lies behind its performance. Some have understandably called this America's "public religion" or civil religion.[52] This is fine so long as we do not mistake the same term for, say, the official secularism of the French government's civil religion or the atheistic public religion of official communism in the former Soviet Union or today's China. America's idea of public religion is thoroughly providential and rich in Christian themes and symbolism. As generations of Americans came to understand it, the nation's Revolution of 1776 was never simply about taxation without representation or mere political independence. It was about fulfilling God's plan for human freedom and ordered liberty through self-government, first in this new nation and ultimately for all mankind. It was on those same terms that Abraham Lincoln taught Americans to understand the even more devastating upheaval of their Civil War. This, too, was the public teaching about America's fateful role in the First and Second World Wars, then in the long Cold War against communism, and now in the twenty-first-century contest with jihadist terrorism. Throughout these momentous affairs, the tonal quality of America's public ethos has been providential. In its central line of thinking, America has envisioned itself as a redeemer nation whose story is not simply a self-made narrative but the reflection of a God-inspired mission with decisive meaning for all mankind.[53]

[52] For essential accounts, see Robert N. Bellah, "Civil Religion in America" in William G. McLoughlin and Robert N. Bellah, eds., *Religion in America* (Boston, MA: Beacon Press, 1968); and Jon Meacham, *American Gospel: God, the Founding Fathers, and the Making of a Nation* (New York: Random House, 2006).

[53] For explorations of this theme in our history, see Ernest Lee Tuveson, *Redeemer Nation: The Idea of America's Millenial Role* (Chicago, IL: University of Chicago Press, 1968); Conrad Cherry, *God's New Israel: Religious Interpretations of American Destiny* (Englewood Cliffs, NJ: Prentice-Hall, 1971); Steven H. Webb, *American Providence: A Nation with a Mission* (New York: Continuum International Publishing, 2004).

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Partisans of today's religious right can understandably claim that contemporary America is only a pale reflection of its Christian past, if by that one means a time when many state laws directly endorsed the Christian religion and its moral precepts. But that pattern had faded long before the 1940s, when the Supreme Court (through interpretation of the Fourteenth Amendment) began applying the First Amendment's religious non-establishment and free-exercise clauses to state governments. America's political ethos is another matter. Pale or not, there is a continuing reflection of something in our public life that is generally religious and vaguely Christian. This remained the case even in the political upheavals of the Sixties. It true that the vision of a redemptive community experiencing individual and collective rebirth was now denominated into a thoroughly secular cultural framework. However, at their best, Sixties activists affirmed the traditional values of authenticity, "of faith and deeds, of civic virtue and redemptive sacrifice."[54] The venerable American tradition of moralizing politics was far from abandoned; it was now invoked in matters of race, gender, class, the environment, consumer protection, sexual preference, and other movements. The tradition of benevolent problem solving for the good of others was carried forward, with Sixties moralists now defining this good to be the liberation of self and others from oppressive structures of authority. Faith was not rejected, but the object of faith changed, from transcendent standards that would judge a person's choices and preferences to faith in the individual and one's personal search for authenticity and self-expression.

And so too today, the traditional moral calculus of republicanism remains quite active in the American mind, even though as we saw, over three-quarters of Americans say they do not believe there is such a thing as unchanging moral truth. At the beginning of the twenty-first century, three out of four Americans also told pollsters that they were worried about the moral condition of the nation and ranked it as one of the top two or three priorities that needed to be addressed. (This same view was held by two-thirds of America's younger generation aged seventeen to thirty-five, as well as by 41 percent of atheists.) And what is to be done? Here again, the old moral calculus of republicanism clicked into place. In light of the perceived moral threat to the nation, 70 percent of Americans in 2001 said they wanted to see religion's influence on American society grow.[55] And three-quarters of these concerned Americans

[54] Maurice Isserman and Michael Kazin, *America Divided: The Civil War in the 1960s* (New York: Oxford University Press, 2000), 300. On the Sixties as a "secular awakening," see Hugh Heclo, "The Sixties' False Dawn: Awakenings, Movements and Postmodern Policy-making" in Brian Balogh, ed., *Integrating the Sixties* (University Park: Pennsylvania State University Press, 1996), 34–63.

[55] Pew Forum on Religion and Public Life, *Lift Every Voice: A Report on Religion in American Public Life* (Washington DC: Pew Research Center, 2002); Steve Farkas, Jean Johnson, Tony Foleno, Ann Duffett, and Patrick Foley, *For Goodness Sake: Why So Many Want Religion to Play a Greater Role in American Life* (New York: Public Agenda Foundation, 2001).

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said it did not matter to them *which* religion it is that becomes more influential. This is hardly a ringing endorsement of Christianity as such. However, it is the continuation of a political ethos that is more vaguely religious than rigorously Christian. Americans continue to define political life in heavily moralistic terms, and to see religion as of primary importance for reviving its deplorable moral condition.

This sixth domain—concerned with an overall political ethos—is by its very nature heavily symbolic. But since symbols matter to human beings, it is no less important because of that. Here, in a general figurative sense appropriate for speaking of such things, my conclusion is that America does meet the loose descriptive attributes in its political ethos for being "sort of" a Christian nation.

By now we are rounding our way toward home, not to the answer, but to answers. Having come this far, we can see that any single answer to the question—is America a Christian nation—must inevitably be misleading, and that in discerning multiple answers to the question, we can move toward a closer approximation of the truth of things. Demographically, America is a Christian nation. In terms of a majority of Americans being morally guided by, doctrinally committed to, or behaviorally faithful to Christianity, America is not a Christian nation. America's political institutions (especially in a legal separation of church and state) and America's political ethos (especially in its moralizing, redemptive character) carry the imprint of the nation's Christian heritage, making America still today a derivatively "sort of" Christian nation.

America A Christian Nation? Christianity's View of the Question

Finally, we might turn the question to a different, more fundamental angle. One need not be a Christian to ask whether the question of America as a Christian nation makes any sense within the framework of Christianity itself. In this case, it is not so much the answers but the question that is put on trial. How Christian is it to view America as a Christian nation?

Obviously, there are bookshelves of theology and interpretation one could consult on this subject, not least St. Augustine's account of two cities co-existing in the world—the city of God composed of Christ's elect who love God, and the earthly city founded on love of power and self. However, all of this can be safely bypassed if we simply turn to the essence of the matter—namely, the understanding given by the central figure of this Christian religion. Jesus's words deal our question a fatal blow. Americans in the collective, as one of the nations of this world, cannot be Christian. Nor can any other people, as the world defines such political, ethnic, or cultural categories. In judging our question, there is a clear verdict produced by the Biblical narratives recounting all the engagements between the originator of this religion and the powers of this world. Consider those two engagements that bracketed the earthly ministry of this religion's central figure.

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The first engagement is said to have taken place at the outset of Jesus's public ministry, with Satan's climactic temptation. The Tempter is described as finally offering the world to Jesus:[56]

> Once again the devil took him to a very high mountain, and from there showed him all the kingdoms of the world, and their magnificence. "Everything there I will give to you," he said to Jesus, "if you will fall down and worship me." (Matthew 4:8)

For our purposes, the interesting thing is that Jesus does not dispute that it is in Satan's legitimate power to offer all the kingdoms of the world to him. The current proprietorship is not in dispute, or as John later puts it, "The whole world lies under the sway of the wicked one." (I John 5:19). Instead of disputing the validity of the offer, Jesus shifts the focus onto a different plane altogether by quoting *Deuteronomy*: "Away with you, Satan. The Scripture says, 'You shall worship the Lord your God and him only shall you serve.'"

The final engagement on this issue of religious nationhood occurred about three years later, before the Roman Empire's representative, Pontius Pilate (John 18:33 ff). With the desertion of not only the fickle crowds but also apparently of all family, friends, and disciples who had known him best, Jesus's public ministry is in ruins.

> Pilate: Are you the King of the Jews?
> Jesus: Are you asking this of your own accord, or have other people spoken to you about me?
> Pilate: Do you think I am a Jew? It's your own nation [εθνος] who handed you over to me. What have you done?

At this point, using a different term, Jesus's response seems aimed precisely at transforming this idea of his own "nation" into a different "kingdom."

> Jesus: My kingdom [βασιλεια] is not founded in this world. If it were, my servants would have fought to prevent my being handed over. But in fact, my kingdom is not founded on all this.

Christianity is a very peculiar religion, perhaps, by conventional standards, not even a religion at all. Its essence is not a set of moral guidelines, or creeds, or sexual and other behavioral rules. Its essence is a person. This person says he is a king, a ruler, but not the ruler of a nation. Rather, he is the ruler of a kingdom manifested in the world—notice Jesus makes a direct connection to how his followers behave in this world—but a kingdom that is not of this world. Here is the Christian pilgrim's ordained path on the narrow ridge between being in and not of this world. Success on this journey is not measured by outcomes necessarily visible in the world, not by collective achievements, numbers of converts and churches, good deeds, political vic-

[56] The quotations were found in J.B. Phillips, *The Gospels Translated into Modern English* (New York: Macmillan, 1959).

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tory, or even national survival. Christian success is measured only by individual faithfulness.

Thus, as ideas occupying the same sentence, Christianity and the American nation are not so much incompatible as they are incommensurate. Seen from the perspective enunciated by the central figure of this religion, the question tempts one to exalt the relative into an absolute. Claims of patriotism, valid as they are, remain inferior to reality. They threaten to lure well-meaning but shallow American Christians into making commensurate what is Caesar's and what is God's. It was worry about this error that led the Christian scholar Richard Niebuhr to warn seventy years ago, "The foes we need to defend ourselves against are always those in our own household, for these deceive us as the foreign foe cannot."[57] And over 1,500 years before Niebuhr, it was the same Christian outlook that led Augustine to insist on the distinctions, priorities, and loves separating the city of man and *The City of God*, even as they shared the same space in time.

So we have come to the end of our attempt at conceptual clarification. Is America a Christian nation? First, yes, America is a Christian nation in a very broad sense of its formal, demographic identity. Second, no, America is not a nation of Christians in any strong traditional meaning of that term—not in moral guidance, not by doctrinal creed, not by cultural behavior. Third, yes, sort of, America is a nation powerfully influenced by Christianity, both in its legal institutions and its political ethos. And as many founding fathers hoped, in the free marketplace of religious competition, America might someday become a nation of more rather than fewer Christians.[58] Fourth and finally, as judged by Christianity itself, America is not and cannot be a Christian nation. The Scripture that believers in this religion call holy indicates that only people, one at a time, and not collective entities, can be "Christian." America, like every other worldly power, is an incommensurate, inferior thing. Hence, if one takes this religion seriously as it presented itself in human form, the answer to this article's question is no way.

What then shall we say? We live in a time—not rare in our history—when a significant number of Americans regard being super-patriotic and super-Christian as the same thing. Pollsters find that today's conservative Protestants have more pride in America than any other religious or nonreligious social group. Among the roughly one-quarter of Americans who belong to conservative Protestant churches, a large majority (77 percent of conservative white Protestants and 87 percent of self-identified evangelicals) see America as founded on Christian principles, and most of these people think that

[57] Richard Niebuhr, "The Limitation of Power and Religious Liberty," reproduced in *Religion and Values in Public Life* 3 (Winter 1995): 4.

[58] Frank Lambert, *The Founding Fathers and the Place of Religion in America* (Princeton, NJ: Princeton University Press, 2003).

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Christian morality should be the law of the land.[59] What such answers to these simplistic polling questions might actually mean politically covers, as the Bible says, a multitude of sins.

Hopefully, clearing the underbrush of "Christian nation" blather will encourage more serious attention to the vital relationship between Christianity and our American democracy. Since it is a relationship between many Americans' Christianity but everybody's democracy, the stakes are high. "Serious attention" means thinking with care, like grownups, and not succumbing to the emotional sloganeering that dominates our public shouting matches on this subject. The Christian right's effort to identify their country with their faith both distorts patriotism and cheapens Christianity. Likewise the secular left's scare tactics about theocracy and insistence on separating all religion from politics is an appeal to emotions, not rational citizenship. Sensible citizens need to know how to answer, with due diligence, the question about America being a Christian nation. Otherwise, abuse of the religion beloved by sincere Christians and the abuse of reason prized by secularists will continue to thrive, thanks in large part to the professional practitioners of low rhetorical cunning.

[59] These and similar findings are in Christian Smith, *Christian America? What Evangelicals Really Want* (Berkeley: University of California Press, 2000) and Greeley and Hout, *The Truth about Conservative Christians*, 90.

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Between Passion and Deliberation: The Christian Right and Democratic Ideals

JON A. SHIELDS

Many thoughtful observers of the American political system have regarded the public activities of religious social movements as a threat to individual freedoms and deliberative democracy. Most recently, social scientists and public intellectuals have denounced the Christian right[1] for violating the norms of a pluralist democracy. They have even compared it to violent and theocratic movements within Islamic fundamentalism. Although Christian right organizations do arouse moral passions, especially in order to mobilize apathetic citizens, they also labor diligently to moderate and inform the passions they have provoked by encouraging activists to embrace deliberative norms, especially the practice of civility, the rejection of theological appeals, and moral reasoning. These labors are undertaken because success in democratic politics requires more than an agitated membership—it also demands deliberative activism. Perhaps more surprising, Christian right leaders routinely ground these deliberative norms in scripture. From their perspective, Jesus was a reasoning and civil interlocutor rather than a belligerent moralist. To violate these deliberative norms, then, is not just impolitic; it is also unfaithful.

Of course, uncompromising extremism can be found in the Christian right. Contrary to the vast majority of evangelicals and Catholics who comprise the Christian right, some fundamentalists, such as Jerry Falwell, Randall Terry, and Bob Jones, have understood their belligerency through a very different interpretation of Christianity and have embraced strategies and tactics consistent with their theology. And although they have proven to be remarkably poor organization builders, some did manage to build direct action organizations,

[1] I define the Christian right as the movement of theologically orthodox Christians (especially evangelicals and Catholics) that has been mobilized around conservative social causes.

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such as Operation Rescue, that once enjoyed success in orchestrating abortion clinic blockades. But today, such organizations are practically without members, and militants such as Jerry Falwell and Randall Terry remain as unpopular as ever in the Christian right. That we continue to view such marginal fundamentalists as representative of the Christian right as a whole prevents us from undertaking a thoughtful assessment of the right or understanding the complex relationship between Christianity and deliberation.

While research on these radicals helps us understand the Christian right and American democracy more broadly, it should also not distract us from an important and pervasive phenomenon: the fundamental tension within most Christian right organizations between the exigencies of mobilization and successful political activism. Understanding this tension should not only simply cause us to reassess the right. Of greater importance, it should highlight a much deeper tension between our own democratic ideals of participation and deliberation.[2] This study suggests that in practice, there is simply no deliberative education absent the mobilization of moral passions. But emotionally charged mobilization efforts are not just inextricably linked to deliberative ends, they are more obviously essential to a participatory democracy. Those who value participation and deliberation equally should be more tolerant of the polemical exhortations necessary for democratic mobilization. On the other hand, those who put a lower value on participatory democracy or believe that deliberative ideals are too compromised by citizen activism should embrace the more elitist wisdom of James Madison, which emphasized the tension between democracy and deliberation.

In making this case, I examine how Christian leaders attempt to shape the public behavior of activists by analyzing a wide variety of elite communications in what have been the largest Christian right organizations over the course of the last two decades, especially the Christian Coalition, the National Right to Life Committee (NRLC), and Concerned Women for America (CWA). I further supplement this evidence with interviews of Christian right leaders. After briefly surveying scholarship on the right and discussing some of its shortcomings, I analyze mobilization messages and then contrast these strident exhortations with the deliberative messages particularly found in training seminars. I then turn my attention to Christian radicals and highlight both their marginality and the grounding of their militancy in a bellicose reading of the Bible. The article then concludes by drawing out the larger normative implications of these findings by highlighting this deep tension between participation and deliberation.

[2] Diana Mutz has emphasized this tension from a very different perspective. According to Mutz, the social contexts in which citizens are most likely to encounter others they disagree with are also the least likely to encourage participation. See Diana C. Mutz, *Hearing the Other Side: Deliberative Versus Participatory Democracy* (New York: Cambridge University Press, 2006).

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Christian Movements and Their Critics

Long before the Christian right mobilized, scholars regarded deep religious conviction as an enduring and ultimately dangerous source of unrestrained zealotry in the American polity.[3] And these critiques have been extended to the contemporary Christian right from nearly every quarter of the social sciences.[4] A typical assessment is that of philosopher Fritz Detwiler, who concludes that the Christian right "intends to bring every aspect of the culture into conformity with its divinely revealed beliefs, values, and strictures."[5] Consistent with Detwiler's view, religious studies professor Jason Bivins argues that the Christian right is founded on an "antiliberalism" that has "antidemocratic" and "intolerant tendencies."[6] From an even more critical perspective, political theorist Mark E. Warren finds that the Christian right does not even enjoy the capacity to "negotiate conflicts with other groups," and law professor William Simon warns that religious fundamentalism is "explicitly hostile to deliberation."[7] Similarly, political scientist Sydney Tarrow places the Christian right among the "ugly movements," along with Islamic fundamentalism and skinhead groups.[8] Tarrow's assessment of the Christian right is consistent with the findings of the Fundamentalism Project—a major interdisciplinary undertaking at the University of Chicago that attempted to trace fundamentalism across the major world religions.[9]

[3] Alexis de Tocqueville, *Democracy in America*, George Lawrence, trans, J.P. Mayer, ed. (New York: HarperPerennial, 1988), 299–300; Richard Hofstadter, *Anti-Intellectualism in American Life* (New York: Vintage Books, 1963); Seymour Martin Lipset, "The Sources of the 'Radical Right' (1955)" in Daniel Bell, ed., *The Radical Right*, 3rd ed. (New Brunswick, NJ: Transaction Publishers, 2002).

[4] Jason C. Bivins, *The Fracture of Good Order: Christian Antiliberalism and the Challenge to American Politics* (Chapell Hill, NC: University of North Carolina Press, 2003); Fritz Detwiler, *Standing on the Premises of God: The Christian Right's Fight to Redefine America's Public Schools* (New York: New York University Press, 1996); Sydney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (Cambridge, UK: Cambridge University Press, 1998); Mark E. Warren, *Democracy and Association* (Princeton, NJ: Princeton University Press, 2001); Gabriel A. Almond, R. Scott Appleby, and Emmanuel Sivan, *Strong Religion: The Rise of Fundamentalisms around the World* (Chicago, IL: University of Chicago Press, 2003); William H. Simon, "Three Limitations of Deliberative Democracy: Identity Politics, Bad Faith, and Indeterminacy" in Stephen Macedo, ed., *Deliberative Politics: Essays on "Democracy and Disagreement"* (New York: Oxford University Press, 1999); Ann Burlein, *Lift High the Cross: Where White Supremacy and the Christian Right Converge* (Durham, NC: Duke University Press, 2002); Eugene F. Provenzo, Jr., *Religious Fundamentalism and American Education: The Battle for Public Schools* (Albany, NY: State University of New York Press, 1990); Sara Diamond, *Roads to Dominion: Right-Wing Movements and Political Power in the United States* (New York: Guilford Press, 1995); Sara Diamond, *Facing the Wrath: Confronting the Right in Dangerous Times* (Monroe, ME: Common Courage Press, 1996).

[5] Detwiler, *Standing on the Premises of God*, 10.

[6] Bivins, *The Fracture of Good Order*, 180–181.

[7] Warren, *Democracy and Association*, 15–16, 198; Simon, "Three Limitations of Deliberative Democracy," 50.

[8] Tarrow, *Power in Movement*, 203–204.

[9] Almond, Appleby, and Sivan, *Strong Religion*, 45–46, 156–157, 187, 198–199.

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These criticisms have been echoed in a much more general way by many prominent students of the culture wars. For instance, James Hunter writes that "the traditions of moral logic" have been distorted by activists' "rhetorical hyperbole whose main use is to appeal to the emotional predispositions of the listener."[10] Similarly, E.J. Dionne exhorts: "If we are to end the cultural civil war over what has so distorted our politics, we need to begin to practice a certain charity and understanding."[11] Even rational-choice advocates, such as Morris Fiorina, stress the irrational nature of cultural activism. According to Fiorina, contemporary activists are "self righteous and intolerant, their rhetoric emotional and excessive," and their rising influence in party politics reveals the "dark side of civic engagement."[12]

In contrast to these claims, more-tempered assessments have found that at least some Christian right leaders have moderated their rhetoric and policy objectives since the collapse of the Moral Majority.[13] Especially with the rise of the Christian Coalition, these scholars saw a new generation of Christian leaders who were more willing to compromise, work with others, and tone down their rhetoric. As Mark Rozell describes the political maturation of the right in the 1990s: "The rhetorical appeals are more moderate sounding; the issue-appeals are more broad based; leading organizations express a sincere desire to reach out to as broad and ecumenical a base as possible."[14]

But although these studies offer a critical corrective, they have not examined in a systematic way the efforts of movement leaders to shape and direct the behavior of rank-and-file activists. Partly because of this shortcoming, there has been little discussion of the ways in which the Christian gospels (Gospel of Matthew, Gospel of Mark, Gospel of Luke, and Gospel of John) are used to encourage deliberation. Furthermore, this study departs from prior work by drawing lessons for both interest group theory and democratic theory, especially by highlighting the critical organizational tension between successful mobilization and public activism.

The Christian right has been misunderstood partly because academics have not accounted for the ways in which the larger political system both undermines and encourages deliberation. Movement leaders, for example, must excite the moral convictions of indifferent citizens to build an activist base. To this end, they have a strong incentive to make strident appeals that compromise deliberative

[10] James Davison Hunter, *Before the Shooting Begins: Searching for Democracy in America's Culture Wars* (New York: Free Press, 1994), 46–47.

[11] E.J. Dionne, *Why Americans Hate Politics* (New York: Simon and Schuster, 1992), 343.

[12] Morris P. Fiorina, "Extreme Voices: A Dark Side of Civic Engagement" in Theda Skocpol and Morris Fiorina, eds., *Civic Engagement in American Democracy* (Washington DC: Brookings, 1999), 395–426.

[13] Mathew Moen, *The Transformation of the Christian Right* (Tuscalossa, AL: University of Alabama Press, 1992); Mark J. Rozell, "Growing Up Politically: The New Politics of the New Christian Right" in Corwin E. Smidt and James M. Penning, eds., *Sojourners in the Wilderness: The Christian Right in Comparative Perspective* (New York: Rowman & Littlefield, 1997); Mark J. Rozell and Clyde Wilcox, *The Second Coming: The New Christian Right in Virginia Politics* (Baltimore, MD: Johns Hopkins University Press, 1996).

[14] Rozell, "Growing Up Politically," 238.

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ideals. Michael Walzer emphasized the same point in his critique of deliberative democracy. According to Walzer, however valuable reasoned debate is to a healthy democracy, "individual men and women have to be stimulated, provoked, energized, excited, [and] called to arms" if political mobilization is to succeed.[15] Decades earlier, Reinhold Niehbuhr made a similar critique of John Dewey's rationalistic view of democratic life: "Contending factions in social struggle require morale; and morale is created by the right dogmas, symbols, and emotionally potent oversimplifications."[16]

Far less well appreciated are the powerful incentives movement leaders have to discipline and educate the passions of mobilized activists before they practice public advocacy. To be sure, not all political activities require tempered and thoughtful activists for their success, and some political activism, such as militant varieties of direct action, actually provides group leaders with a disincentive to encourage deliberation. However, political activities that aim to persuade public officials or citizens, such as contacting representatives, writing letters to the editor, participating in school board meetings, and engaging in informal moral suasion are generally far more efficacious when undertaken by citizens who practice deliberative norms.

While these competing political incentives have been misunderstood, so too has the potential of Christian faith to simultaneously excite and temper moral passions. On the one hand, the gospels encourage moral righteousness by contrasting good and evil, the light and the dark, and the saved and the damned. Certainly much has been made of the ability of these types of distinctions to provoke public action and radicalism. On the other hand, the gospels also command Christians to be charitable, honest, and humble, and to love their neighbors as themselves—teachings that are taken more seriously, not less, by America's most devout believers. For these reasons, Christian faith has proven to be a remarkable source of civility even in the face of hostility, especially in the abolitionist and early civil rights movements. One of the few intellectuals to capture something of this truth was Christopher Lasch, who argued that "for those who take religion seriously, belief is a burden, not a self-righteous claim to some privileged moral status. . . . The spiritual discipline against self-righteousness is the very essence of religion."[17] Reinhold Niehbuhr has gone further by identifying the deeper tension within Christianity: "Religion is at one and the same time humility before the absolute and self-assertion in terms of the absolute. Naturalists who accuse religion of either too much pride or of too abject self-deprecation, fail to understand the paradox of the religious life."[18] Therefore, however much Christianity encourages public dogmatism, it also furnishes powerful teachings that movement leaders can use to temper and educate moral passions.

[15] Michael Walzer, "Deliberation, and What Else?" in Stephen Macedo, ed., *Deliberative Politics*, 58–69.

[16] Reinhold Niebuhr, *Moral Man and Immoral Society* (New York: Charles Scribner's Sons, 1960), xv.

[17] Quoted in Patrick Deneen, "Christopher Lasch and the Limits of Hope," *First Things* 148 (December 2004): 26–30.

[18] Niebuhr, *Moral Man and Immoral Society*, 64.

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Mobilizing the Faithful

Mobilization efforts within the Christian right are often hard to observe, precisely because they are not meant for public consumption and often take place in the context of churches and informal social networks. An important exception is direct mail, since it is a readily observable means of political mobilization as well as among the most important. In fact, Paul Johnson's study of public interest groups found that direct mail was "the single most important method" of contacting and recruiting new members.[19] What follows, then, is an analysis of 144 pieces of direct mail distributed by the Christian Coalition and CWA between 1992 and 2001.[20] Significantly, this survey covers the mid-1990s, when CWA and especially the Christian Coalition were thriving organizations.

Direct mail from the Christian Coalition and CWA is often belligerent and inconsistent with deliberative norms. For instance, they regularly characterize opponents on the left using terms that emphasize their extremism, such as "abortionists," "radical special interests," "militant homosexuals," and "ultra-feminists."[21] Nor are political opponents described as simply misguided or wrong-headed. Instead, they are depraved actors who, among other evils, attempt to "destroy marriage," promote "baby harvesting," corrupt the "innocence of children," and labor toward "the wholesale destruction of parental authority."[22] Activists on the left are also portrayed as actors who are underhanded, dishonest, and deceitful. According to the Christian Coalition, the left embraces "oppressive and unconscionable tactics," does "everything possible to misrepresent our concerns and positions," and are "masters of misinformation and confusion."[23] Making similar claims, CWA reported to its current and prospective members that liberal activists "grotesquely distort the truth," perpetrate "horrible deceptions," and are "masters of dishonest rhetoric."[24] They also resort to "vicious political ploys" and are willing to "use any political tactic conceivable."[25] The Christian Coalition and CWA also routinely accuse the left of religious "bigotry" and attempting to "silence" or marginalize Christian

[19] Paul E. Johnson, "Interest Group Recruiting: Finding Members and Keeping Them" in Allan J. Cigler and Burdett A. Loomis, eds., *Interest Group Politics*, 5th ed. (Washington DC: Congressional Quarterly Press, 1998): 35–62.

[20] This was all the mail from the Christian Coalition and CWA that was in the archives at the People for the American Way during this period. The direct mail in these organizations, like all such mailings, was uniformly strident and at odds with deliberative norms. For this reason, I have not used a more formal content analysis to present my data.

[21] For some examples, see CWA direct mailings: December 1992; 21 January 1993; January 1993; 20 February 1998; Christian Coalition direct mailings: July 1997; October 1997.

[22] CWA direct mailings: March 1992; May 1992; July 1992; December 1992; October 1993; July 1994; 1 August 2001; 16 August 2001. Similar charges can be found in CWA: February 1993; April 1994; September 1996; November 1996; February 1997; March 1997; August 1997; 20 February 1998; 18 January 2000. Christian Coalition direct mailing: March 1997.

[23] Christian Coalition direct mailings: October 1997; February 2000; May 2000.

[24] CWA direct mailings: February 1992; 9 March 1998; August 1999.

[25] CWA direct mailings: 4 June 1992; July 1992.

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voices.[26] To be sure, this vilification does not foster the goodwill and reciprocity that deliberative debate demands.

In addition to such harsh characterizations, the Christian Coalition's and CWA's direct mail does not encourage moderate action. Indeed, approximately *half* of all such mail explicitly compares contemporary moral conflicts to a war, just as the critics of the culture wars rightly insist. Repeatedly, for example, the Christian Coalition and CWA argue that if the right is to "win the war" against "liberal forces," it must continue "fighting battles," launching "powerful counter-strikes," and training its "army of neighborhood captains."[27] And, unlike their wavering allies in Congress, the Christian Coalition and especially CWA argue that they will not compromise. CWA's president expressed her disapproval of compromising allies this way: "I am angry, appalled, and disgusted by this weak and compromising 'leadership.'" Refusing to mince words in another mailing, CWA promised that it "will never compromise Christian values."[28] Meanwhile, the Christian Coalition exhorted its members to "get involved and prove that a growing 'outrage' still exists among the electorate."[29]

Nor does direct mail from the Christian Coalition and CWA shirk from the theocratic language that may fuel uncompromising radicalism. In response to the Freedom of Choice Act, for instance, one CWA letter warned: "We cannot allow such ungodly laws to rule our society."[30] In another letter, CWA encouraged its base to continue fighting "those who oppose God's laws and commandments," since they seek to "destroy His purpose."[31] The Christian Coalition used more-strident, even revolutionary, language in one of its mailings: "NEVER AGAIN will we be subject to a government that dishonors our Lord."[32] And after the disappointing elections in 1992, the Christian Coalition consoled its members with this prophetic message: "Remember, God sent Moses and his people into the wilderness for a time before delivering them to the Promised

[26] Christian Coalition direct mailings: July 1993; November 1993; March 1994; September 1994; December 1994; March 1997; 3 July 1997; 2 September 1997; May 2000; five mailings had unknown date. Concerned Women for America direct mailings: May 1993; October 1994; February 1996; April 1999; August 1999; 21 February 2000.

[27] Christian Coalition direct mailings: May 1993; July 1993; September 1993; November 1993; June 1994; July 1994; September 1994; December 1994; May 1995; January 1997; March 1997; 3 July 1997; 2 September 1997; October 1997; 26 November 1997; 3 March 1999; May 1999; 4 June 1999; February 2000; May 2000; five mailings, date unknown. CWA direct mailings: January 1992; May 1992; July 1992; September 1992; December 1992; February 1993; May 1993; 18 June 1993; October 1993; February 1994; April 1994; July 1994; September 1994; November 1994; February 1996; May 1996; August 1996; November 1996; February 1997; 3 June 1997; July 1997; September 1997; 2 December 1997; January 1998; 5 February 1998; 9 March 1998; 18 May 1998; 2 June 1998; September 1998; February 1999; May 1999; October 1999; 7 February 2000; 4 May 2001; 1 August 2001; 16 August 2001.

[28] CWA direct mailings: December 1992; July 1997; January 1998.

[29] Christian Coalition direct mailing, date unknown.

[30] CWA direct mailing, February 1992.

[31] CWA direct mailing, July 1992.

[32] Christian Coalition direct mailing, 2 July 1998.

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Land."[33] Finally, Scripture is also commonly cited to support political arguments, as are more-general appeals to a "Judeo-Christian heritage," "godly standards," and "biblical values."[34]

The fact that direct mail is often inflammatory and tends to undermine democratic deliberation has certainly not gone unnoticed by critics of the culture wars. But these critics also have a tendency to overestimate greatly the function and significance of direct mail. Amitai Etzioni, for example, suggests that direct mail represents all "in-house communications" at the Christian Coalition.[35] James Hunter also misses the mark when he argues that direct mail is a good reflection of public discourse.[36]

Direct mail is arguably a kind of public discourse, but not in the sense that actual exchanges between citizens in state houses, city council meetings, colleges, or outside of abortion clinics are public discourse. Instead, direct mailings are solicitations carefully targeted to individuals who are likely to be sympathetic to a particular cause or set of causes. Direct mail can be strident, therefore, precisely because there is no need to change the opinions of those citizens who consume it—it is preaching to the converted. Once citizens commit to acting on their convictions, moreover, Christian leaders that use such mail then tell them *how* to act in public forums.

But whatever ill consequences such mobilization efforts certainly may have on democratic discourse, there is no gainsaying the success of Christian right mobilization. Indeed, Christian right leaders and activists have successfully mobilized one of the most politically alienated constituencies in twentieth-century America.[37] Throughout the twentieth century, white evangelical voters turned out at far lower rates than other whites, even after controlling for relevant socioeconomic variables. During the 1990s, however, this discrepancy diminished considerably.[38] In fact, the participatory revival among evangelicals has been so remarkable that it has been acknowledged in some surprising quarters. For example, at least some opponents on the left have admired the right's success. According to the director of the Virginia Democratic Party

[33] Christian Coalition direct mailing, date unknown.

[34] CWA direct mailings: July 1992; August 1992; October 1992; October 1993; February 1994; August 1994; July 1996; November 1996; January 1997; February 1997; June 1997; September 1997; November 1997; January 1998; 9 March 1998; 30 July 1998; October 1998; February 1999; April 1999; May 1999; October 1999; 4 January 2000; 18 January 2000; 21 February 2000; 4 May 2001; August 2001; 16 August 2001. Christian Coalition direct mailings: October 1997; February 2000; one with unknown date.

[35] Amitai Etzioni, *The New Golden Rule: Community and Morality in a Democratic Society* (New York: Basic Books, 1996), 99–100.

[36] James Hunter, *Culture Wars: The Struggle to Define America* (New York: Basic Books, 1991), 165–166.

[37] On the political alienation of evangelicals, see George Marsden, *Fundamentalism and American Culture: The Shaping of Twentieth-Century Evangelicalism, 1870-1925* (New York: Oxford University Press, 1982), 88–90, 120, 204–205.

[38] Clyde Wilcox, *Onward Christian Soldiers? The Religious Right in American Politics* (Boulder, CO: Westview Press, 2000), 110–111.

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caucus: "The Christian Coalition has done nothing sinister. They've taken tactics used by Democrats and Republicans for years, mastered them, put them to work; and now even Democratic professionals like myself get the Christian Coalition training manuals, read them and appropriate things that are good, and now we go back to our people and try to teach them the same things."[39] Even Robert Putnam has noted the right's participatory revival in his otherwise grim portrayal of civic life. Putnam writes: "Religious conservatives have created the largest, best-organized grass roots social movement of the last quarter century. It is, in short, among Evangelical conservatives, rather than among the ideological heirs of the sixties, that we find the strongest evidence for an upwelling of civic engagement."[40]

Democratic Education

Once citizens are mobilized, most Christian leaders labor diligently to teach their activists deliberative norms. As highlighted in the introduction, these norms include the practice of civility and respect, the rejection of appeals to theology, and practice of careful moral reasoning. In addition, orthodox traditions in Christianity, such as conservative evangelicalism and Catholicism, have not been as significant an obstacle to citizen deliberation as many academics contend. In fact, Christ is regarded as a model of civility, compassion, understanding, humility, honesty, and critical thinking, among other virtues. But even when Christian leaders do not invoke the gospel, they always emphasize that moral persuasion requires thoughtful deliberation rather than militant moralism.

The following evaluation of democratic education in the Christian right relies principally on written communications that tell activists how to behave in the public square from within the movement's largest political organizations: the Christian Coalition, CWA, and the NRLC. I also scrutinized communications from elites to activists within the most important Christian activist training organization, Stand to Reason, and in leading Christian media, such as *Christianity Today* and Focus on the Family radio broadcasts and magazines.[41] The communications I collected varied in terms of their accessibility to outsiders—some were immured within the confines of political organizations, while others were available freely on the Internet. They included newsletters, magazines, web-based documents, pamphlets, radio broadcasts, and especially training manuals. These communications are further supplemented by interviews with Christian leaders.

[39] Quotation from Rozell and Wilcox, *The Second Coming*, 85.

[40] See Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Touchstone, 2000), 162.

[41] Throughout the article I use the terms *elites* and *leaders* to refer to paid staff in Christian right organizations and media; activists are volunteers.

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Civility

Practicing civility and respect for other citizens and their opinions is probably the most fundamental of all deliberative norms. After all, without such goodwill, no real discussion can take place. It is also the norm that academics, including James Hunter, E.J. Dionne, and Morris Fiorina, among many others, tend to find most wanting in the culture wars.[42] However, civility is easily the most universally taught deliberative norm in the Christian right.

Throughout the right, citizens are called on to be truly *Christian* activists. For example, Lori Kehoe, the president of New York State Right to Life, explained that the "mantra" she repeats in training seminars is "Love your neighbors as yourself." According to Kehoe, such love is critical to building relationships and opening people up to the pro-life message.[43] Likewise, the president of Right to Life of Michigan instructs her members as follows: "Let us work together spreading the message of life in ways that recognize the dignity of all those created in the image of God.... May we not spread hatred and bitterness. May we not tear down others to advance ourselves."[44] Chuck Gosnell, the state chairman of the Colorado Christian Coalition, argues that civil dialogue respects God's commands as well: "As we strive to present an authentic Christian witness in the public square, it is vital that we speak in a manner that is honoring to God.... Therefore, I believe that our mission should be to maintain open and respectful dialogue with any person or group who is interested in doing likewise."[45] Echoing Gosnell's exhortation, the Christian Coalition of New Jersey instructs activists to engage others "in a spirit of love."[46] Meanwhile, the president of CWA reports that when her organization trains its members, organization leaders "urge them to share their convictions with graciousness, in a Christian spirit."[47]

The Christian gospel is not only linked to public civility in large, highly professionalized organizations such as the Christian Coalition, CWA, and the state affiliates of the NRLC. It can also be found in small, upstart organizations such as the Central Virginia Family Forum (CVFF), a grassroots organization that is very active in the Charlottesville area. Once the CVFF's efforts to close a newly constructed Planned Parenthood clinic caught the attention of pro-choice activists, the two camps prepared for a confrontation at a subse-

[42] Hunter, *Culture Wars*; E.J. Dionne, *Why Americans Hate Politics*, 343; Fiorina, "Extreme Voices," 395–426.

[43] Lori Kehoe, interview by author, telephone, 13 July 2004.

[44] Right to Life of Michigan, "President's Message: Working to Defend Life," Newsletter, June/July 2003.

[45] Chuck Gosnell, "Raising the Standard," accessed on the website of the Christian Coalition of Colorado at www.ccco.org, 16 June 2002.

[46] New Jersey Christian Coalition, "Christian Coalition—Mainstream?" accessed on the website of the New Jersey Christian Coalition at www.nychristiancoalition.org, 18 June 2002.

[47] Beverly LaHaye, "Success Without Compromise," *Concerned Women for America Magazine*, May 1991, 6.

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quent Board of Supervisors meeting. Marnie Deaton, the founder of CVFF, instructed her activists beforehand to "Please pray in advance for this meeting that Christ's love for these women [pro-choice activists] and their families will be evident through our actions."[48]

Of even greater significance, activist training organizations press the importance of Christian love far wider than any single grassroots political organization can. For instance, Stand to Reason—an organization devoted to Christian Apologetics that trains some 40,000 activists every year and reaches millions more through mass media appearances—orients all of its instructions around Christian discipleship. Targeting college students, churches, and a wide variety of pro-life organizations, Stand to Reason encourages all of its trainees to become "Christian Ambassadors." At the most general level, such Christian diplomacy requires citizens to conduct public activism in ways that follow Christ's example. Indeed, the very notion is drawn from 2 Corinthians 5:20, which reads: "We are ambassadors for Christ, as though God were entering through us." What this means in more-concrete terms is elaborated by the "Ambassador's Creed," which, among other criteria, defines an ambassador as one who practices "grace," and "kindness" and is always "sympathetic and understanding towards the opposition." To act in a contrary manner, therefore, does not simply violate social graces or compromise political goals, it "dishonors Christ" as well.[49]

Stand to Reason's emphasis on reconciling activism with the gospel does not mean that it is unconcerned with political efficacy. Rather, its staff tends to view its teachings as far more effective than those of strident radicals. As Scott Klusendorf—the former director of bioethics at Stand to Reason—put it to me at Biola University, the likes of Jerry Falwell and Pat Robertson have been a "disaster" for Christian politics.[50] Speaking before a large evangelical audience on Christian radio, moreover, Klusendorf told fellow believers that Christians could either make a "loving, persuasive case" for their views or be marginal to political life.[51] But it is also true that instructors at Stand to Reason are reluctant to embrace even apparently efficacious tactics that fall outside of what they regard as true Christian activism. For example, when I asked one instructor about the direct action tactics of Operation Rescue West, which has had some success in closing abortion clinics by harassing abortion providers, he responded sharply: "I hope that is not what you think of Christianity!" He further explained that he thought harassing people was simply un-Christian.[52]

Reaching an even wider audience, the Christian media also links Christian discipleship to political civility and compassion. For example, this view of Christian activism has been propounded on Focus on the Family's radio broadcasts, which are hosted by James Dobson. Dubbed the "undisputed king of

[48] Email from Marnie Deaton, "CVFF Update for Week Ending 10-22-04," 22 October 2004.
[49] Stand to Reason, "Ambassador's Creed," 2003.
[50] Scott Klusendorf, interview by author, La Mirada, CA, 2 March 2004.
[51] Focus on the Family radio broadcast, "Reaching Hearts on Abortion," 19 January 2004.
[52] Stand to Reason instructor, interview by author, telephone, 23 July 2004.

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Christian radio," Dobson reaches about four million listeners every week with his broadcast.[53] In the winter of 2002, Tom Minnery, who directs a social action center at Focus on the Family and writes books encouraging Christians to get involved in politics, spoke on Dobson's program about politics and Christianity. Drawing authority from Romans 12:14, Minnery exhorted his audience to "bless those who persecute you" in an effort to encourage Christians to practice civility in the public square. Dobson agreed and added that Christians will never accomplish their collective goals by "ridiculing" or "marginalizing" others.[54] Minnery, moreover, has been pressing this view of Christian activism in mainstream evangelical media for many years. More than ten years prior to the Focus broadcast, for instance, he cautioned Christians in *Citizen* magazine: "In the heat of Christian activism, it is easy to lose the self-discipline and compassion that mark the disciple of Christ."[55] Another well-known evangelical author, Charles Colson, made a similar plea in the pages of *Christianity Today*: "A broken world will see either our faces twisted in hate and anger or the face of Christ, listening, serving, speaking the truth in love."[56]

But not all leaders in the Christian right root the importance of civility and respect for other citizens in biblical foundations. Others, who are principally guided by pragmatic considerations, emphasize the political fruit such virtues nourish. In the Christian right, there has perhaps been no greater pragmatist than Ralph Reed, the former director of the Christian Coalition. Reed warned Coalition members early in his tenure: "We can never win until we learn to communicate effectively." Becoming an efficacious communicator, Reed further instructed, meant that activists had to "avoid hostile and intemperate language," "acknowledge the opinion of others and the sincerity of their beliefs," and remain "tolerant of diverse views and respectful of those who espouse them."[57] When the Christian Coalition was thriving in the early 1990s, it further institutionalized Reed's plea through training seminars that reminded members that persuasion is often a slow process that requires persistence and civility. Harsh criticisms, on the other hand, only antagonize opponents and foreclose the possibility of persuasion. For example, one seminar provided the following advice: "Even if they [political leaders] are on the other side of an issue, a sincere and non-threatening visit from faith-based activists can do much to move them toward an understanding of your concerns. You may not change their minds at first, but civil behavior always leaves the door open to future visits." This instruction concluded categorically: "Never, ever burn a bridge."[58]

[53] John W. Kennedy, "Mixing Politics and Piety: Christian Talk Radio," *Christianity Today*, 15 August 1994, 42–46.

[54] Focus on the Family radio broadcast, "A Call to Social Action," 4 March 2002.

[55] Tom Minnery, "Moral Outrage is Not Enough," *Citizen*, 15 April 1991, 1.

[56] Charles Colson, "Don't Swing That Bible," *Citizen*, 21 April 1990, 2.

[57] Ralph Reed, "A Strategy for Evangelicals," *Christian American*, January 1993, 14.

[58] Christian Coalition, *Training Seminar Manual, Level II* (Chesapeake, VA: Christian Coalition, 1995), 52–54.

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But Reed has certainly not been alone. The NRLC, which, from its founding, has been nonsectarian by charter, casts the importance of civil dialogue in strategic rather than theological terms. For example, the NRLC's lobbying guidelines instruct activists to: "be calm, reasonable, and respectful. . . . Threats or open antagonism are seldom if ever helpful and [are] often counterproductive; they can even turn an apathetic pro-abortion legislator into a committed pro-abortion activist."[59] State affiliates of the NRLC often supplement national guidelines with their own instructions. Arkansas Right to Life, for instance, tells its activists to "always be courteous, reasonable, and respectful in all contact with the elected official and staff."[60] The leadership of the Ohio Right to Life Society—one of the most active state affiliates, with nearly seventy chapters—gets to the root of the problem by challenging the prejudices of Christian activists: "Do not assume that he or she is a proabort, feminazi, anti-religious bigot; a liberal know-nothing; just plain evil or other negative stereotype. We must start by respecting our listener's humanity. . . . We must be models of what we are trying to teach, which is respect for the dignity of others."[61] And Massachusetts Citizens for Life lists "tolerance" and "compassion" among its core, foundational values.[62]

Other groups have been especially concerned with countering negative stereotypes of Christian conservatives, which have been fueled by a hostile media and by a handful of militant radicals within the right's own ranks. Pro-life organizations, in particular, stress the importance of changing a negative public image, which is still heavily shaped by the clinic murders of the 1990s. The director of volunteers at Arizona Right to Life put the problem to her members this way: "We are portrayed as angry, intolerant extremists with one agenda—to impose our self righteous views on the rest of the world. . . . You have the opportunity to let the world see who the pro-life movement really is—a compassionate, intelligent, self sacrificing group of people who are interested in helping others see what they see—that human life is precious, regardless of its quality or location."[63] Betraying a similar concern, Human Life of Washington provides this advice to members before they draft letters to editors: "Never NEVER use your letters as a tool to attempt to impose guilt on them. NEVER MUD SLING. Let the other side do all the foaming at the mouth. Nothing does more to dispel the slur of 'fanatic' than sticking to rational discourse."[64] Meanwhile, Jane Grimm, the president of the Ohio Right to Life Society, explained to

[59] Lisa Andrusko, ed., *Infinite Possibilities: National Right to Life Committee Yearbook 2004* (Washington DC: National Right to Life Committee, 2004), 148.

[60] Arkansas Right to Life, "Citizen Guide for Contacting Elected Officials and Grassroots Lobbying," accessed on the website of the Arkansas Right to Life Committee at www.artl.org, 28 June 2004.

[61] Future for Life, *The Future: Acting for Life in a New Age Handbook* (June 2004), 6–7.

[62] Massachusetts Citizens for Life, "About MCFL," accessed on the website of Massachusetts Citizens for Life at www.masscitizensforlife.org, 28 June 2004.

[63] Julie Watson, "Who We Are," *Life Lines*, September/October 2002, 7.

[64] Human Life of Washington, "Writing Letters," accessed on the website of Human Life of Washington at www.humanlife.net, 29 June 2004.

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her rank and file: "We are perceived ... as violence prone, religious bigots, and uncaring people who are only concerned about the baby." The solution to this public perception, according to Grimm, is to effectively "communicate the love that we have for [all] life."[65]

These pragmatic concerns have not been lost on the Christian media. Focus on the Family, for example, ran an entire series of articles in its publication, *Citizen*, that emphasized the hazards of culture war politics. In one such article, entitled "Don't Swing That Bible," Focus on the Family cautioned its readership as follows: "Rather than piercing anyone's conscience, I wonder if we are stabbing both our neighbors and our own cause." Furthermore, "we must woo people's hearts toward righteousness. But we cannot woo unless we love."[66] Likewise, *Christianity Today* has consistently echoed these messages.[67] In just one of several articles that detailed the hazards of unrestrained cultural warfare, *Christianity Today* opined: "Culture-war rhetoric leads us to distort others' positions, to see enmity in the place of mere disagreement. It leaves no room for nuanced positions, or for middle ground."[68] In another issue, the president of Americans United for Life argued that "pro-lifers" must be "caring, sensitive, and inclusive" and use "reasonable and compassionate" language if those Americans in the middle are to be reached.[69]

Scripture

Democratic education in the right even tends to promote one of the most controversial deliberative requirements, the abandonment of religious argumentation in public forums. Religious arguments should be excluded, according to deliberative democrats such as Amy Gutmann and Dennis Thompson, because the norm of reciprocity requires citizens to offer grounds for their positions that are "mutually justifiable."[70] But precisely because religious arguments tend to be no more persuasive to ordinary citizens than they are to ivy

[65] Jane Grimm, *Life Times*, January/February 2002, 1–2.

[66] Colson, "Don't Swing That Bible," 1–3. Minnery, "Moral Outrage is Not Enough"; Tom Minnery, "How to Argue on Unfriendly Terrain," *Citizen*, 15 April 1991; and Tom Minnery and John Elredge, "Does Activism Seem Unloving (It Shouldn't)," *Citizen*, 18 December 1995.

[67] Charles Glenn, "When Christians Speak Up in Public," *Christianity Today*, 5 September 1986, 26–28; Charles Colson, "How Prolife Protest Has Backfired," *Christianity Today*, 15 December 1989, 72; Guy M. Condon, "You Say Choice, I Say Murder," *Christianity Today*, 24 June 1991, 20–23; Paul Brenton, "Casualties of the Abortion Wars," *Christianity Today*, 26 October 1992, 22–25; Charles Colson, "Sweet Reason and Holy Outrage," *Christianity Today*, 19 July 1993, 64; John D. Woodbridge, "Culture War Casualties: How Warfare Rhetoric is Hurting the Church," *Christianity Today*, 6 March 1995, 20–26.

[68] Woodbridge, "Culture War Casualties," 20.

[69] Condon, "You Say Choice, I Say Murder," 22.

[70] Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, MA: Harvard University Press, 1996), 52–57.

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league academics, Christian activists embrace secular arguments in the public square. So although Christian leaders draw on scripture to promote deliberative norms, they also argue that appeals to theology should be scrupulously avoided in public forums.

Efforts to avoid theologically grounded arguments are especially strong among pro-life leaders. In fact, as I have argued elsewhere, one of the great and unrecognized ironies of the abortion debate is that pro-choice leaders want to frame abortion as a religious issue, while their pro-life opponents want to highlight philosophical and scientific objections to abortion.[71] The strategies of both camps make political sense. Pro-choice leaders correctly recognize that if the ontological status of embryos is regarded as a religious question, then it is properly quarantined to the realm of private faith rather than public deliberation. Any effort to restrict abortion, therefore, is an unjustified assertion of sectarian metaphysics. On the other hand, Christian leaders understand this pitfall and discourage their members from making religious arguments.

The effort to shift public debate about abortion onto secular ground is especially evident within the state affiliates of the NRLC, which has long been the largest pro-life organization in the country. At the Arizona Right to Life, for example, its leaders stress that the pro-life position cannot succeed "until we address the concerns of secular minded citizens." To this end, Arizona leaders continue, "facts are our friends."[72] Striking a similar note, Dan Kennedy, the executive director of Human Life of Washington, gives his activists the following advice: "To be heard, we must speak in a language that holds meaning for people ... not simply in a style we think they should hear." Furthermore, "we must reach out to all segments of society in a manner that is compelling and relevant to their lives."[73] Or as Pat Chivers, the director of governmental relations at Georgia Right to Life, puts it to her activists before they contact their representatives, "We just can't preach!"[74]

Other leaders even express exasperation at their opponents' efforts to frame abortion as a religious issue. Leaders at Georgia Right to Life, for instance, made this plea to its activists: "Do not be sidetracked by pro-abortion comments that typically come up. The most common is to dismiss the undeniable facts of prenatal life as merely a 'religious' issue. Do not allow your questioner to discount the scientific facts of life with misleading beside-the-point rhetoric."[75]

Meanwhile, Lisa Roche, who is the media spokesperson for Maine Right to Life, was clearly frustrated with the pro-choice campaign against a proposed

[71] Jon A. Shields, "Bioethical Politics," *Society* 43 (September/October 2006): 19–24.

[72] Gary Weiand, "An Alternative Approach," *Arizona Right to Life Newsletter*, August 2000.

[73] Dan Kennedy, "A Voice in the Wilderness: Raising Our Voices in the Public Square," *Human Life Newspaper*, July 2000.

[74] Pat Chivers, interview by author, Crystal City, Virginia, 3 July 2004.

[75] Georgia Right to Life, "Abortion Arguments No. 1," accessed on the website of Georgia Right to Life at www.grtl.org, 28 June 2004.

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ban on partial-birth abortion in her state because it attempted to characterize the ban as a religious issue. As she put it to me, "It has nothing to do with religion!"[76] More recently, Greg Koukl, the president of Stand to Reason, criticized Ron Reagan's advocacy on behalf of embryonic stem cell research this way: "By labeling our view as 'theological belief' ... Reagan tried to dismiss our ethical case, banning it to the wasteland of irrelevance."[77] And pro-life student organizations at fourteen of America's most elite universities ran the same full-page ad in their respective student newspapers that elaborated an extended philosophical apology for the pro-life position. The ad concluded with this defense: "Contrary to the claims of our opponents, none of our appeals have been personal, private, or religious. Our simple demand is for the equal protection of all human beings."[78]

At Stand to Reason, instructors are especially interested in discouraging religious arguments even as they consistently use scripture to support deliberative norms. Its "Ambassador's Creed," described earlier, for example, directs Christian activists to be "careful with language, and not rely on Christian lingo." Stand to Reason instructors, moreover, have expressed disappointment with other Christian leaders who continue to make religious arguments. Scott Klusendorf, for example, was clearly upset by a recent appearance of Jerry Falwell on *Donahue*, where he elaborated a critique of homosexuality based on scripture. As Klusendorf put it, "He should have made arguments based on the public good and not Deuteronomy," given the show's largely secular audience.[79]

And although preoccupation with discouraging the use of scripture in the public square is especially pronounced among pro-life leaders, it is certainly shared by elites in the Christian right more broadly. CWA, for example, exhorts its members as follows before they contact their representatives: "Don't preach: remember, you want to influence your legislator's vote, not convert him to your religion."[80] Likewise, Focus on the Family advised the extensive readership of *Citizen* magazine to avoid using scripture or "Christianese" when making their arguments and instead make "common-sense arguments."[81] Tom Minnery elaborated this instruction for *Citizen* readers by giving this concrete advice: "When Christian citizens make anti-pornography arguments, they shouldn't use Scripture. Instead, they should use moral arguments that make common sense to all. Pornography degrades women. Pornography desensitizes men to rape and other sexually violent behavior. Pornography shops attract prostitution and

[76] Lisa Roche, interview by author, telephone, 3 August 2004.

[77] Greg Koukl, *Solid Ground* cover letter, 1 September 2004.

[78] First Right, "Human Rights for All," accessed on the website of First Right at www.student.virginia.edu/~1stright/ad.doc, 1 April 2005.

[79] Scott Klusendorf, interview by author, La Mirada, California, 2 March 2004.

[80] Concerned Women for America, "Pocket Guide on How to Lobby from Your Home," pamphlet, n.d.

[81] Colson, "Don't Swing That Bible," 1–3.

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depress property values," and so on. Thus, Minnery even advocated some arguments that are close to the heart of many feminists.[82] Charles Colson of Focus on the Family further summarized the strategic utility of common sense appeals this way: "Because Christian activists seek to change society, they must win the support of mainstream Americans, many of whom will be alienated by Christian imagery, theology and idiom."[83]

These messages are echoed in the pages of *Christianity Today.* In an article on the politics of gambling, for example, the founder of the National Coalition Against Legalized Gambling made the following suggestion: "In a pluralistic nation, the church is not in a position to dictate, 'Thou shall not gamble.' But we can ask the right questions: What is social morality? What is just economics? What is good uncorrupted government?"[84] *Christianity Today* extended this logic further when it argued that religious arguments are ineffective at best and offensive at worst: "When we speak in the public square . . . we can be faithful to Christ while using the language of the public square. . . . It would be insensitive as well as ineffective, for example, for Christians to exhort their Jewish, Muslim, or agnostic neighbors in terms of what Jesus would want us to do."[85]

Finally, the Christian Coalition and NRLC have even tried to minimize theological debate within their own chapters. As Mark Rozell has argued, the Christian Coalition leadership was greatly influenced by the failures of the Moral Majority, which collapsed in part because it could not build a broad-based coalition of religious faiths.[86] This lesson prompted the Christian Coalition leadership to design training materials that direct members to defuse religious tensions. For instance, one Christian Coalition training seminar instructed members to "avoid confrontations on theological issues. Our mission is to change the laws under which our nation is governed, not to establish religious doctrine."[87] Likewise, Holly Gatling, the secretary of the NRLC, informed me that her organization has been non-sectarian by charter from the very beginning because its founders did not want theological questions to divide the rank and file.[88]

Moral Reasoning

Christian right leaders know that to be persuasive, it is not enough to simply make secular arguments. Activists must also make well-reasoned and informed arguments. Given this reality, Christian leaders embrace the very heart of deliberation, which is traditionally defined in the context of American politics

[82] Minnery, "How to Argue on Unfriendly Terrain," 5–6.
[83] Colson, "Don't Swing That Bible," 3.
[84] Thomas Grey, "How to Fight Gambling," *Christianity Today*, 18 May 1998, 39.
[85] Woodbridge, "Culture War Casualties," 26.
[86] Rozell, "Growing Up Politically," 236–238.
[87] Christian Coalition, *Citizen Action Seminar* (Chesapeake, VA: Christian Coalition, 1995): 14.
[88] Holly Gatling, interview by author, Crystal City, Virginia, 2 July 2004.

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as "reasoning on the merits of public policy."[89] From their perspective, good arguments are persuasive not only for their obvious intellectual merits, but also because they help to establish the credibility of those who propound them. Christian elites, therefore, caution their activists to avoid false or distorted claims. They also encourage activists to stick to supportable arguments and defend their positions with carefully reasoned arguments rather than personal feelings or emotions.

Christian leaders regularly express concern about the distortion of information. For instance, the president of the NRLC exhorted abortion activists: "Accuracy, please. Meticulous accuracy should be the order of the day in terms of factual happenings."[90] NRLC's lobbying guidelines also warn activists against the temptation to spread misinformation in this way: "If the congressman or staff asks you a question that you don't know the answer to, don't guess. Tell him you'll provide that information later—and do so. If you give a congressman or his aid misinformation, it can erode your credibility and that of other pro-life lobbyists."[91] In a similar vein, an article in Focus on the Family's *Citizen* entitled "Check Your Facts Before You Act" documented the danger of losing credibility when false rumors are spread. The article concluded: "Because errors are so common, it is hard to overemphasize the need for skepticism."[92] *Christianity Today* even argued that in distorting opponents' positions, nothing short of Christian faith is compromised: "The command to love has a particular obverse side: 'we may not bear false witness.' ... After engaging in careful research, we may discover that we have misunderstood them, and if so, are duty bound to say so rather than continue misrepresenting them."[93] Concerns over the accuracy of information have been especially prominent at the Christian Coalition, which has endured considerable legal heat over its voter guides. In a 1994 strategy briefing, the Christian Coalition director of voter education exhorted state leaders as follows: "If you're not certain [as to a candidate's position] don't risk it. The credibility is on the line of your organization and of this tool [voter guides]."[94]

Just as often, Christian leaders discourage the use of arguments that rely heavily on personal emotions and too little on facts or thoughtful arguments. As a seemingly exasperated leader put it to her members in an effort to encourage them to attend the state conference of the New Mexico Right to Life Committee, "It is fine to have a strong emotional feeling about being prolife. How-

[89] Joseph M. Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago, IL: University of Chicago Press, 1994), 46–47.

[90] J.C. Willke, "Unity or Divisiveness?" *National Right to Life News*, 16 August 1990.

[91] Andrusko, *Infinite Possibilities*, 148.

[92] Mark Hartwig, "Check Your Facts Before You Act," *Citizen*, 17 May 1993, 6–7.

[93] Woodbridge, "Culture War Casualties," 25.

[94] Chuck Cunningham, Pat Garland, and Rick Schencker, "Voter Guides: Educating Pro-Family Voters" (transcript of the Christian Coalition Conference and Strategy Briefing Workshop, Washington DC, 17 September 1994).

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ever, you also need to have a strong knowledge base to accompany those feelings. Arguing on emotion usually doesn't affect the average person, but a good source of different facts that are able to 'push the right buttons' can convince others to the cause."[95] Or as the leadership of the Ohio Right to Life Society instructs activists before they engage their representatives: "Resolve to take a REASONED (not emotional) approach to the matter."[96] Likewise, leaders at Texas Right to Life tell its activists to "provide legislators with objective evidence" since they "want substantive reasons to defend their vote to themselves and others."[97]

The propensity of some activists to let their emotions dominate their conduct was described very candidly by Pat Chivers, the director of governmental relations at Georgia Right to Life. According to Chivers, when some activists take offense at what their representative has done, "they just want to walk in there and tell them off." But Chivers labors to prevent such outbursts by training her activists first. As she describes it, "I help channel that energy" by providing them with talking points and emphasizing that they are building a relationship. The education director complements Chivers's efforts at Georgia Right to Life by subjecting activists to Stand to Reason's six-part course on bioethics and even trains them to present it themselves at local churches.[98] Here again, Christian leaders help activists subordinate their moral passions to disciplined reasoning.

Inside CWA and the Christian Coalition, the emphasis is much the same. CWA, for example, invokes the rationalism of Abraham Lincoln in its plea to activists: "Reason, cold, calculating, unimpassioned reason, must furnish the materials of our future support and defense."[99] To further "unimpassioned reason" in its ranks, CWA has also produced a series of pamphlets that document the legal history of the church–state conflict, evidence of a link between breast cancer and abortion, federal government regulations on public schools, and medical findings on RU-486.[100] Likewise, the Texas Christian Coalition advises members to only make requests that are "reasonable and possible to accomplish," devoid of "exaggeration," and not "argumentative or abrasive." Texas leaders emphasize that observing these guidelines "will go a long way in opening up communication."[101] Staffers at South Carolina Christian Coalition

[95] Dauneen Dolce, "Commentary from the Editor," *Viva Life*, September 2003, 2.

[96] Ohio Right to Life, "Tips for Successful Legislative Contacts," n.d.

[97] Texas Right to Life, "Lobbying Guidelines for a Visit with Your Legislator or Congressional Candidate," accessed on the website of Texas Right to Life at www.texasrighttolife.com, 29 June 2004.

[98] Pat Chivers, interview by author, Crystal City, Virginia, 3 July 2004.

[99] Janice Shaw Crouse, *Strategies for Reclaiming America's Future* (Washington DC: Beverly LaHaye Institute, 2000), 7.

[100] Pamphlet titles include *The Facts About Existing State ERA Laws*; *A Painful Choice: Breast Cancer's Link to Abortion*; *RU-486: What You Need to Know*; *Sex Education in America's Schools: An Evaluation of Sex Information and Education Council of the United States*; and *Religion in Public Schools: Understanding Where the Line is Drawn*.

[101] Texas Christian Coalition, *Handbook for Grassroots Lobbying: 2001-2002 Edition* (2002), 4–8.

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also want their activists to be flexible and reasonable rather than moral zealots. They instruct activists as follows: "If indicating displeasure to your lawmakers, be constructive and suggest alternatives," and "Recognize that compromise is often an essential ingredient of the lawmaking process."[102] Making the same request, the leadership of the Oregon Christian Coalition reminds its rank and file to "identify possible alternatives" and "accommodate other ideas."[103]

The concern that Christian activists too often subordinate their intellect to emotions is especially strong at Stand to Reason. When I interviewed Scott Klusendorf of Stand to Reason he did not fundamentally disagree with Richard Hofstadter's view that American evangelicalism has an anti-intellectual tradition that values the spirit over intellectual rigor. Indeed, Klusendorf routinely makes the same critique. As he put it, Christian conservatives have been "good at shouting conclusions, not establishing facts."[104] Or, as Klusendorf explained the same point to Christian activists, "We have a pro-life movement that does pretty well at marches and rallies, but we're not doing so hot in terms of building Christian thinkers who can articulate a pro-life view."[105] In an effort to build Christian thinkers, Klusendorf regularly reminds his evangelical audiences, as he did recently on a Focus on the Family radio broadcast, that 1 Peter 3:15-16 requires Christians to "give reasons" for their beliefs. Therefore, Klusendorf continues, "scripture commands us to argue well."[106] Perhaps more important, though, Stand to Reason bridges the distance between Christian activists and the American academy. For example, its standard "pro-life 101 seminar" draws heavily from the best pro-life philosophers, especially Catholic intellectuals such as Patrick Lee and Robert P. George, and then disseminates these arguments to a wide variety of sympathetic citizens in churches, Christian schools, and pro-life organizations.

However, it is difficult to assess just how successful mainstream organizations have been at directing and informing the passions of their activists, because available evidence has been mixed. On the one hand, survey data demonstrate that evangelical and especially fundamentalist activists have lower levels of political tolerance than other activists but higher levels than ordinary Americans.[107] On the other hand, political tolerance has been conceptualized quite differently from deliberative norms and arguably is a better measure of

[102] South Carolina Christian Coalition, "Keys to Effective Interaction with Lawmakers," accessed on the website of the South Carolina Christian Coalition at www.scchristiancoalition.org/resources.shtml#interact, 16 June 2002.

[103] Christian Coalition of Oregon, "How to be a Lobbyist: A Vestpocket Handbook for Citizen Lobbyists," accessed on the website of the Christian Coalition of Oregon at www.coalition.org/political/lobbyist.htm, 16 June 2002.

[104] Scott Klusendorf, interview by author, La Mirada, California, 2 March 2004.

[105] Scott Klusendorf, "What the Average Person Can Do to Stop Abortion," accessed on the website of Stand to Reason at www.str.org/free/bioethics/average.htm, 24 February 2004.

[106] Focus on the Family radio broadcast, "Reaching Hearts."

[107] Clyde Wilcox and Ted Jelen, "Evangelicals and Political Tolerance," *American Politics Quarterly* 18 (January 1990): 25–46; Wilcox, *Onward Christian Soldiers?* 110–111.

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civil libertarianism than public civility and reasoning.[108] In addition, these studies say very little about how citizen groups might affect activists over time. One exception is a survey by Mark Rozell and Clyde Wilcox of Virginia GOP convention delegates which found that senior Christian right activists were much more likely to disagree with the statement "compromise is not necessary" than were new activists. They were also more likely to disagree with the view that there is "only one correct Christian position."[109] Meanwhile, more-qualitative studies have suggested similarly positive effects. For instance, participant observation of anti-abortion activists suggests that they are careful to avoid theological claims and are more civil and open to dialogue than pro-choice activists.[110] In addition, a case study of twenty-six Ohio chapters of the Christian Coalition found that the chapters that were really thriving embraced the Coalition's pragmatic approach to politics. Meanwhile, chapters with limited operations were much more radical and purist in their orientation.[111] In any case, much more works needs to be done to untangle the effects of democratic education efforts on rank-and-file activists.

Radical Departures

Of course, the Christian right is a movement that also houses radical organizations and personalities. Nearly all important social movements in American history have produced similar radicalism at their margins, including the "Garrisonians" in the abolitionist movement, the women's crusade in the temperance movement, black power in the civil rights movement, and the Weatherman in the New Left. In all these cases, radicals denied the efficacy of conventional politics. In this case, radicals also reject moderation because they are inspired by fundamentalism, which is a relatively small and unusually militant strain of evangelical Protestantism. This militancy sets them apart from the majority of evangelical Protestants and Catholics who people the major Christian right organizations and who dislike radicalism for many of the same reasons other Americans do.

Militantly opposed to the more deliberative modes of mainstream Christian activism are a handful of organizations that tend to be committed to direct action. Shortly after the near collapse of the Rescue movement, Randall

[108] There is also little evidence that Christian activists actually attempt to violate others' civil liberties. An emphasis on deliberative norms, on the other hand, assumes that most of the right's ends, such as outlawing gay marriage and abortion, are contestable and legitimate. If this is right, then what really matters is *how* these ends are pursued.

[109] Wilcox, *Onward Christian Soldiers?* 113–114.

[110] Shields, "Bioethical Politics," 19–24; Jon A. Shields, "The Nature of Christian Right Activism" (paper presented at Fellows Conference, Miller Center of Public Affairs, University of Virginia, Charlottesville, VA, 13 May 2005).

[111] Laura Berkowitz and John C. Green, "Charting the Coalition: The Local Chapters of the Ohio Christian Coalition" in Smidt and Penning, eds., *Sojourners in the Wilderness.*

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Terry blasted movement leaders for their moderation: "Now certain 'Christian leaders' are 'inspiring' droves of Christians to move into the 'big tent' of the Republican Party—a happy tent housing child-killers and sodomites." Repudiating compromise as sinful, Terry continued: "The Ten Commandments are not on the auction block. We will not auction away the eternal, flawless law of heaven for temporary, flawed political gains."[112] Likewise, Operation Save America argues that deliberative politics has "caused us to believe that we can legislate this evil out of our culture slowly but surely by education, sound reasoning, and political maneuvering. . . . The battle for the lives of children will never be won by educating and seeking common ground with those who refuse to see the truth."[113]

What remains of the Rescue movement can only be found in very small outposts, the most significant of which is Operation Rescue West, an organization devoted to harassing abortion providers in an attempt to close clinics. Its director, Troy Newman, is well aware that most pro-life activists do not regard his methods as Christian. In fact, Newman reports that Christians often give him this response: "I'm Christian and pro-life but what you people are doing is not loving."[114]

Newman is certainly right about one thing: his political militancy and that of other fundamentalists offend the vast majority of Christian activists. This has been true from the very beginning of the Christian right. Stuart Rothenberg and Frank Newport's 1983 survey of evangelicals, for example, demonstrates that slightly more than half of evangelicals did not even have an opinion of Jerry Falwell and a majority of those who did reported an unfavorable one.[115] That same year, James Hunter's interviews with evangelical college and seminary students led him to conclude that the Moral Majority faired no better in the eyes of evangelical citizens. Hunter found that despite natural political affinities between the new Christian right organizations and evangelicals, most of the young students he interviewed reported that these groups had "exceed[ed] the limits of political decorum by attempting to impose their will on an unwilling majority." In fact, even though Hunter identified significant diversity among evangelicals in other respects, he concluded that their low opinion of the Moral Majority and its new allies was "ubiquitous."[116] Another study, by James Guth, found that a plurality of Southern Baptist ministers, who would later be critical to the Christian Coalition's mobilization efforts, described themselves as

[112] Randall A. Terry, "Selling Out the Law of Heaven," *The Washington Post*, 18 September 1994.

[113] Operation Save America, "Incrementalism—A Lie from the Pit of Hell!" accessed on the website of Operation Save America at www.operationsaveamerica.org/news/news/2001-04.html, 19 June 2002.

[114] Troy Newman, *Their Blood Cries Out* (Wichita, KS: Restoration Press, 2003), 184–185.

[115] Stuart Rothenberg and Frank Newport, *The Evangelical Voter* (Washington DC: Free Congress Research and Education Foundation, 1984), 140.

[116] James Davison Hunter, *Evangelicalism: The Coming Generation* (Chicago, IL: University of Chicago Press, 1993), 143–150.

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opponents of the Moral Majority. Furthermore, many of the Baptist ministers who regarded themselves as sympathetic to the Moral Majority also expressed reservations about the group's tactics and goals, and only 3.3 percent were actual members.[117] More contemporarily, a 1997 survey of Christian right activists found that Operation Rescue was held in relatively low regard and only 4 percent identified as members.[118]

Meanwhile, pragmatic elites within the Christian right routinely express their own unfavorable views of uncompromising radicals. As the president of Americans United for Life argued in *Christianity Today*: "Some of the more strident activists of the prolife movement have yet to understand that they discourage rather than encourage a prolife consensus in the public mind. ... Operation Rescue leader Randall Terry helps the proabortion cause when he advocates what sounds like a lot of theocracy to humanistic and otherwise pluralistic ears."[119] Making a similar point, a New York pastor blasted Operation Rescue's Spring of Life Campaign in *Christianity Today*: "The intensity of the rhetoric, the disruptions of order in the community, and the skewing of truth only seemed to polarize people further on the issue. One hopes that the consciousness-raising work they accomplished ... will find productive redirection."[120] This emphasis on "redirection" captures the distinction between pragmatists and radicals perfectly—both want to mobilize moral passions, but pragmatists want to educate them as well.

Unfortunately, the radical differences between these camps have been obscured by the tendency to treat the Christian right as a radical monolith led by some of the most sensational and marginal Christian leaders. Only when these differences are accounted for can we thoughtfully evaluate the right and abandon the assumption that orthodox believers necessarily compromise democratic values. What matters is not ardent faith, but how that faith is interpreted and understood by ordinary Americans.

The Promise and Limits of Deliberation

An overemphasis on Christian radicalism also distracts us from the deeper tension in mainstream organizations between mobilization and public advocacy, which has implications for proponents of deliberation. By far the most influential work in this tradition is Amy Gutmann and Dennis Thompson's *Democracy and Disagreement*. According to Gutmann and Thompson, citizens

[117] James L. Guth, "Southern Baptist Clergy: Vanguard of the Christian Right?" in Robert C. Liebman and Robert Wuthnow, eds., *The New Christian Right: Mobilization and Legitimation* (Hawthorne, NY: Aldine Publishing Company, 1983), 118–122.

[118] Institute for First Amendment Studies and Bliss Institute of the University of Akron, "Survey of Christian Right Activists," accessed on the website of the Institute for First Amendment Studies at www.ifas.org/library/survey/index.html, 9 July 2002.

[119] Condon, "You Say Choice, I Say Murder," 22.

[120] Brenton, "Casualties of the Abortion Wars," 22–23.

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should become rational skeptics who are committed to discerning the public good through deliberation. As they explain, deliberative democracy requires citizens to "recognize that they may be wrong, and that their opponents may be right." Deliberative citizens, therefore, should ultimately be "uncertain about the truth or their own position" and should not even "try to get what they want."[121]

To some extent, this study should lend support to the optimism of deliberative democrats. After all, the Christian right—the most zealous and dogmatic movement in the academic if not public mind—is laboring diligently to practice deliberative norms. The right even labors to abide by one of the most stringent and controversial deliberative requirements, which is the abandonment of religious argumentation in public forums. To a great extent, then, the conflict over whether deliberation should exclude religious arguments is a moot one. On the other hand, Christian activists are not the full deliberative democrats that Gutmann and Thompson have in mind. For instance, because the opinions of Christian activists are still ultimately grounded in their faith, they are not open-minded in the sense that they would readily change their opinions in the face of new evidence. My own experience in observing hundreds of Christian activists suggests that they often become more confident of their views when trained to defend them on secular ground. That is, Christians' confrontation with secular knowledge may actually make them more entrenched in their opinions.

But this fact may be less a limitation of the right than of politics. After all, there is no evidence that citizens with a Socratic-like moral skepticism, however desirable in theory, have ever maintained any real-world social movement. Social movements, whether celebrated or not, have all been driven by strong convictions rather than provisionally held truths.[122] As with polemical exhortations in the context of mobilization, a dogmatic resistance to new views may be the price of a more participatory democracy. But if Christian activists' confrontation with deliberative norms does not bring them any closer to a careful moral skepticism, such norms still sharpen and expand their own thinking as well as raise the level of public debate for the benefit of the vast majority of more-ambivalent Americans, most of whom tend to think about political questions far less than activists do.

Perhaps more troubling to deliberative democrats, though, the deliberative education of Christian activists is only purchased at the price of mobilizing moral passions that are not always easy to control. In fact, the ongoing efforts of elites within the Christian right to educate their activists attest to the persistence of moral passions rather than their demise. But because citizens in Christian right organizations only receive their deliberative education after, not before,

[121] Gutmann and Thompson, *Democracy and Disagreement*, 41–44, 77–78.

[122] A similar observation is made in John Patrick Diggins, "Proceduralism, Pragmatism, and Postmodernity," *The Hedgehog Review* 2 (Spring 2000): 100–105.

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they become involved in politics, there is simply no democratic education absent the mobilization of moral passions. In practice, citizens learn deliberative norms not primarily through public schools as Gutmann proposes, but in some of the very interest groups that are regarded as corrosive to deliberative democracy.[123]

But, of course, the rancor of mobilization efforts is not simply a cost that must be borne for the sake of an imperfect deliberative education. It also contributes to the participatory character of American democracy. Therefore, proponents of deliberative democracy need to accept limits to the deliberative ideal if they also value participation. If such theorists want a more participatory democracy, then they should be tolerant of the moral passions that are so important to mobilization efforts. This tolerance is particularly needed when political organizations attempt to recruit and rally sympathetic citizens. On the other hand, if deliberative democrats ultimately decide that their ideals are too compromised by undisciplined activists, then they should embrace the Federalists' more elitist emphasis on the tension between mass participation and deliberation. They argued that deliberation was only possible in institutions that are insulated from public passions. Therefore, keeping the public weak and distant from their representatives was a necessary though insufficient condition for deliberative decision making.*

[123] Amy Gutmann, *Democratic Education* (Princeton, NJ: Princeton University Press, 1985).

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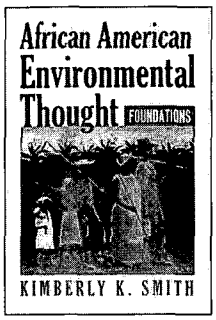

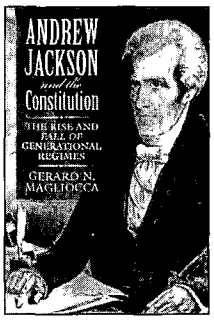

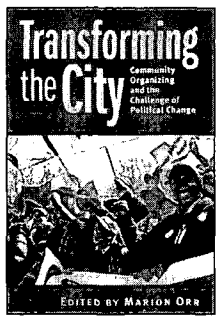

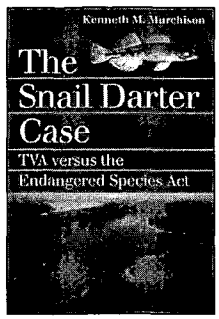

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The Basis of Puerto Rico's Constitutional Status: Colony, Compact, or "Federacy"?

DAVID A. REZVANI

The subject [of unwritten constitutional rules] . . . is not one of law but of politics, and need trouble no lawyer or the class of any professor of law.

—A.V. Dicey, 1885

What is Puerto Rico's political and constitutional status vis-a-vis its central government in Washington DC? The focal point around which the politics of this nationalistically distinct island group of 3.9 million U.S. citizens has revolved for more than a century has been the issue of the territory's political condition. This was the case even before the U.S. takeover of the territory after the 1898 Spanish-American War. After America's occupation and annexation of the territory, its status was an international badge of dishonor for America when categorizing Puerto Rico as a colony seemed inescapable.[1] Even as presidents such as Woodrow Wilson lectured other countries about the instabilities of imperial control and the need for self-determination, Puerto Rico remained an example of naked American colonialism. Since 1952, however, after its "commonwealth" regime was established, the issue of what Puerto Rico is and how to describe it has been at times bitterly debated by scholars and by Puerto Rico's three main parties, which center their political platforms on a hoped-for future status option. Each party is to one degree or

[1] On the history of the constitutional development of Puerto Rico, see especially José Trías Monge, *Puerto Rico: The Trials of the Oldest Colony in the World* (New Haven, CT and London: Yale University Press, 1997), 1–140; and Arnold H. Leibowitz, *Defining Status: A Comparative Analysis of United States Territorial Relations* (Dordrecht, the Netherlands: Nijhoff, 1989), 127–185. See also Raymond Carr, *Puerto Rico: A Colonial Experiment* (New York: New York University Press, 1984), 17–72; W. Michael Reisman, *Puerto Rico and the International Process: New Roles in Association* (Washington DC: American Society of International Law, 1975), 2–35; and Natan Lerner, "Puerto Rico: Autonomy, Statehood, Independence?" in Yoram Dinstein, ed., *Models of Autonomy* (New Brunswick, NJ: Transaction Books, 1981), 125–134.

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another dissatisfied with the island group's present political condition and uses its view of what Puerto Rico is now as a stick to win over local, U.S., and even international actors to their favored constitutional preference.[2] Advocates of a modified version of the present status quo (the Popular Democratic Party) have historically argued that after 1952, a "compact" was created between the United States and Puerto Rico that legally binds each side to obtain the other's consent before any changes are made to Puerto Rico's post-1952 constitutional order. Both independence advocates (the Independence Party) and those who favor remaking the territory into a state of America's federation (the New Progressive Party) reject this view and argue that the decades since Puerto Rico's new regime began in 1952 have changed nothing. According to this view, Puerto Rico is still a mere colony of the United States under the absolute (plenary) power of Congress.[3] Such views, however, are politically, constitutionally, and historically incorrect. Puerto Rico is neither a mere colony nor are its powers formally safeguarded by a "compact" created in 1952. Instead, similar in significant respects to the historic British dominions like Canada and South Africa in the late nineteenth and early twentieth centuries, Puerto Rico's powers are rendered difficult to change by unwritten constitutional rules, which are also known as "conventions."[4] Puerto Rico is

[2] For a notable case of how such views have affected U.S. leaders, see, Hearings before the House Committee on Resources "To provide a process leading to full self-government for Puerto Rico," H.R. 856, 105th Congress, 1st sess., 1997, 40–445.

[3] See for instance, Juan R. Torruella, *The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal* (Rio Piedras: University of Puerto Rico, 1985), 167–200; Juan R. Torruella "One Hundred Years of Solitude: Puerto Rico's American Century" in Christina Duffy Burnett and Burke Marshall, eds., *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution* (Durham, NC: Duke University Press, 1998), 241–250; David M. Helfeld, "How Much of the United States Constitution and Statutes Are Applicable to the Commonwealth of Puerto Rico?" *Federal Rules Decisions* 110 (November 1985): 452; T. Alexander Aleinikoff, *Semblances of Sovereignty: The Constitution, the State, and American Citizenship* (Cambridge, MA: Harvard University Press, 2002), 77; Peter J. Fliess, "Puerto Rico's Political Status under Its New Constitution," *Western Political Quarterly* 5 (December 1952): 635–656; José A. Cabranes, "Puerto Rico: Out of the Colonial Closet," *Foreign Policy* 33 (Winter 1978–79), 68. For arguments on the unconstitutionality of final decision-making powers being allocated to territories such as Puerto Rico based on the Constitution's Presidential Appointment Clause rather than the Territorial Clause, see Gary Lawson and Guy Seidman, *The Constitution of Empire: Territorial Expansion and American Legal History* (New Haven, CT: Yale University Press, 2004), 124–138.

[4] The term "convention" used in the literature on the topic refers to unwritten constitutional rules rather than a meeting of officials to draft or change a written constitution, as in the "Constitutional Convention of 1787." In this paper, the terms "convention" and "unwritten constitutional rule" will be used interchangeably. On convention in Britain, see Geoffrey Marshall, *Constitutional Conventions: The Rules and Forms of Political Accountability* (Oxford, UK: Oxford University Press, 1984); C.R. Munro, "Laws and Conventions Distinguished," *Law Quarterly Review* 91 (April 1975): 218–223; Vernon Bogdanor, *The Monarchy and the Constitution* (Oxford, UK: Oxford University Press, 1995); R. Brazier, *Ministers of the Crown* (Oxford, UK: Oxford University Press, 1997); and R. Brazier, *Constitutional Practice*, 2nd ed. (Oxford, UK: Oxford University Press, 1994). On convention (unwritten

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best described not as a colony or as some other governmental form, but as a conventionally entrenched "federacy."[5]

A federacy is a territory within the international legal boundaries of a state that has been allocated some entrenched (very difficult to take away) final decision-making powers without being a member unit of a federation. It is this quality of having some powers that are entrenched that often makes federacy the solution of choice to moderate struggles between states and their secession-prone nationalistically distinct territories. Examples of modern federacy arrangements in the world include the Åland Islands (Finland), the Azores and Madeira (Portugal), Greenland (Denmark), Crimea (Ukraine), Nunavut (Canada), New Caledonia (France), Gagauzia (Moldova), the Netherlands Antilles (the Netherlands), Zanzibar (Tanzania), and South Tyrol (Italy). As with the aforementioned cases, federacy can deliver real powers

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constitutional rules) in the United States, see Christopher G. Tiedeman, *The Unwritten Constitution of the United States: A Philosophical Inquiry into the Fundamentals of American Constitutional Law* (New York: G.P. Putnam's Sons, 1890); James Bryce, *American Commonwealth*, 3rd ed. (New York: Macmillan, 1895), 391–407; James Wilson, "American Constitutional Conventions: The Judicially Unenforceable Rules that Combine with Judicial Doctrine and Public Opinion to Regulate Political Behavior," *Buffalo Law Review* 40 (Fall 1992): 645–738; Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia University Press, 1908); Herbert W. Horwill, *The Usages of the American Constitution* (Oxford, UK: Oxford University Press, 1925); William Bennett Munro, *The Makers of the Unwritten Constitution* (New York: Macmillan, 1930), 1–23; Thomas C. Grey, "Do We Have an Unwritten Constitution?" *Stanford Law Review* 27 (February 1975): 703–718; Thomas C. Grey, "Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought," *Stanford Law Review* 30 (May 1978): 843–893; Thomas C. Grey, "The Original Understanding and the Unwritten Constitution" in Neil L. York, ed., *Toward a More Perfect Union: Six Essays on the Constitution* (Provo, UT: Brigham Young University, 1988), 151–165; Suzanna Sherry, "The Founders' Unwritten Constitution," *University of Chicago Law Review* 54 (1987): 1127–1177; Bruce Ackerman, *We The People* (Cambridge, MA: Belknap Press of Harvard University Press, 1991), 44–50, 81–130; David A. Strauss, "Common Law Constitutional Interpretation," *University of Chicago Law Review* 63 (Summer 1996): 877–935; Keith Whittington, *Constitutional Construction: Divided Powers and Constitutional Meaning* (Cambridge, MA: Harvard University Press, 1999); Richard H. Fallon, Jr., "Judicial Legitimacy and the Unwritten Constitution: A Comment on Miranda and Dickerson," *New York Law School Law Review* 45 (2000–2001): 119–140; Richard H. Fallon, Jr., *Implementing the Constitution* (Cambridge, MA: Harvard University Press, 2001); Michael Foley, *The Silence of Constitutions: Gaps, "Abeyances," and Political Temperament in the Maintenance of Government* (London: Routledge, 1989).

[5] While others have not argued that Puerto Rico's status is conventionally entrenched, Daniel Elazar passingly referred to Puerto Rico as a federacy with sparse justification. See for instance, Daniel J. Elazar, "International and Comparative Federalism," *PS: Political Science and Politics* 26 (June 1993): 190–195. For brief use of the concept of federacy, see Brendan O'Leary, "Building Inclusive States," *Human Development Report Office Occasional Paper* (United Nations Development Programme, 2004), 75–94, accessed at http://www.ids-ps.org/Doc/Oxford/5.PDF, June 2005; Alfred C. Stepan, "Federalism and Democracy: Beyond the U.S. Model," *Journal of Democracy* 10 (1999): 20; Ronald L. Watts, *Comparing Federal Systems in the 1990s* (Ontario: Institute of Intergovernmental Relations, 1996), 8–13; and Michael R. Stevens, "Asymmetrical Federalism: The Federal Principle and the Survival of the Small Republic," *Publius, The Journal of Federalism* 7 (Fall 1977): 117–203.

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of internal self-determination and domestic sovereignty to distinctive enclaves without the problems that are sometimes associated with state fragmentation or territorial assimilation.

It is true that the United States does control a great deal of the powers that Puerto Rico would otherwise control were it fully independent. Despite this, however, the final decisions on certain issues are still credibly under the full control of the territory. Crudely lumping a complex and sometimes formidable political entity such as Puerto Rico into the same category as colonies, a category that existed within historic empires such as those of France, Britain, Spain, and the Soviet Union, creates a needless emotional diversion and adds little to our ability to understand the subtleties of the territory's relations with the United States and how it compares to similar entities in the world today and in history. The correct analogies to Puerto Rico are not the many colonies of historic empires, but rather other conventionally entrenched federacies such as the historic British dominions as they existed before World War I. Before directly addressing the modern constitutional relationship between the United States and Puerto Rico, some background will first be given on how this arrangement developed.

Puerto Rico's Constitutional Development

Before the modern U.S.–Puerto Rico constitutional relationship was established in 1952, Puerto Rico was subjected to much of the same forcible cultural indoctrination and political assimilation as other territories acquired by the United States in its expansion westward. Through the brilliance of its federation government, established in 1787, the United States was able to achieve dominance over a vast territory that was previously controlled by the British, French, Spanish, Mexicans, and a multitude of indigenous populations, and successfully overcame the destabilizing nationalistic hostility that plagued and fragmented other empires. For a number of decades after the Spanish-American war, however, the United States flirted with self-damaging, European-style imperialism.[6] Its stabilizing federation formula was therefore not extended to Puerto Rico.

The Territory's Traditional Political and Legal Position

While the 10th Amendment to the U.S. Constitution makes it clear that members of the federation (states) have some powers of domestic sovereignty, Article IV, Section 3, clause 2, by contrast, makes it clear that Congress has

[6] On America's new empire-building strategies during this time, see Dennis Merrill and Thomas G. Paterson, eds., *Major Problems in American Foreign Relations*, vol. 1 (Boston, MA: Houghton Mifflin, 2005), 89–98.

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absolute power (plenary power) over nonstate territories, such as Puerto Rico, that exist within America's international legal confines:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

In a nineteenth-century case, the Supreme Court affirmed this by making it clear that Congress's "sovereignty over them [is] complete."[7] Through simple majority legislation, it was decided that the U.S. Congress has the power to make and unmake rules for the territorial legislatures.

Accordingly, as with other territories in U.S. history, the Hispanic population of Puerto Rico was subjected to a systematic policy of cultural and political assimilation. Policies were put into effect, for instance, to introduce English as the only medium of communication in schools in a territory where the only language that was spoken was Spanish.

The political machinery that would govern the newly acquired territory was set up by Congress in 1900 with the passage of the Foraker Act. This statute established a governor, an eleven-man executive council, a thirty-five-person assembly (the House of Delegates), and an elected resident commissioner who would speak for Puerto Rico in the U.S. House of Representatives.[8] The problem, however, in the eyes of most Puerto Ricans was that the governor was appointed by the U.S. president, the executive council consisted mostly of non-Puerto Rican appointees, the assembly's powers were subject to U.S. congressional veto, and the resident commissioner was deprived of voting privileges in America's Congress.

In 1901, in a series of now-infamous cases known as the Insular Cases, the Supreme Court debated what should be done with the densely populated territories acquired after the 1898 Spanish-American War and decided that Puerto Rico was an "unincorporated" territory.[9] Unlike incorporated territories, in which residents have full constitutional rights, and which eventually become states of the Union, unincorporated territories have only basic protections from

[7] *Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States* (1889), 136 U.S. 1, 42. A well-known counter-example to this view was set forth by the Supreme Court in *Dred Scott*, in which it was argued that the territorial clause only applied to territories that were in the possession of the United States at the time when America became independent, and territories acquired after that would be governed under the provisions of the Constitution that apply to admitting new states. *Scott v. Sandford* (1856), 60 U.S. (19 How.) 393, 438–439, 443. Aleinikoff, *Semblances of Sovereignty*, 75–76. This view, however, was sustained by Supreme Court decisions neither before nor after *Dred Scott*. See, for instance, *Dorr v. United States* (1904), 195 U.S. 138, 140; *Sere v. Pitot* (1810), 10 U.S. (6 Cranch) 332, 337; *American Ins. Co. v. Canter* (1828), 26 U.S. (1 Pet.) 511, 542. See also Leibowitz, *Defining Status*, 140–155.

[8] Leibowitz, *Defining Status*, 141.

[9] *Downes v. Bidwell* (1901), 182 U.S. 244, 294. For an excellent discussion of the Insular Cases, see Leibowitz, *Defining Status*, 17–25.

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the Constitution, such as the writ of habeas corpus, prohibition against cruel and unusual punishment, and protections against unreasonable searches and seizures.[10] Otherwise, they are subject to the full and unfettered power of Congress. In his dissenting opinion in a 5-4 decision, Justice John Harlan complained in one of the cases that

> The concurring opinion . . . assumes that Congress is not bound, in those territories or possessions to follow the rules . . . prescribed by the Constitution . . . . That theory assumes that the Constitution created a government empowered to acquire countries throughout the world, to be governed by different rules than those obtaining in the original states and territories, and substitute for the present system of republican government a system of domination over distant provinces in the exercise of unrestricted power.[11]

For the first few decades after the U.S. takeover of Puerto Rico, the territory was beset by economic squalor at relatively the same level as Haiti or some of the other similarly poor areas in the Caribbean. American direct rule initially did little to change these circumstances. Economic backwardness remained and sometimes worsened.

In 1917, after Woodrow Wilson's election, Democratic majorities in both houses of Congress passed the Jones Act (the Revised Organic Act of 1917).[12] While this act had the merit of granting U.S. citizenship to Puerto Rico's population, it fell far short of providing its government any credible final decision-making powers. Furthermore, Washington was still very much involved in the territory's affairs through key central government appointments, such as the governor, the attorney general, the auditor, and the commission of education, who were under the influence of the U.S. Department of the Interior.[13] When Puerto Rico's assembly, for instance, voted to allocate funds to help earthquake victims or to establish scholarships to encourage education, the attorney general reportedly canceled the allocations as supposed violations of the Jones Act.[14] And while the United States did take some action to redress the dire poverty in the territory, such aid was far less than that allocated to states of the Union, which, in the minds of many, underscored Puerto Rico's subordinate, colonial status. In 1935, Puerto Rico's governor complained that the territory was receiving one-eighth the amount that would go to a state under the Federal Emergency Relief Act.[15]

Mirroring some of the problems of other empires, the conditions of economic squalor, the perceived outrages of imposition by a foreign power, and the sense that they were indeed a distinct national population provided

[10] For more on this see Leibowitz, *Defining Status*, 186.
[11] *Downes v. Bidwell.*
[12] Act passed on 2 March 1917.
[13] Monge, *Puerto Rico*, 88.
[14] Ibid.
[15] Ibid., 96.

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fertile ground for resistance and, in some cases, violent rebellion. For most of the 1930s, Puerto Rico witnessed rising cases of politically motivated violence directed at America's proxy government in the territory. Nationalist militants and police clashed on several notable occasions, culminating in the assassination of a local police chief in 1936 and the "Ponce Massacre" in 1937, when police fired upon independence protesters in the southern city of Ponce. Nineteen people were killed, and around 150 were wounded. This climate also made the secessionist liberal party into the strongest party in the territory.

The Post-1952 Constitutional Formulation

In response to lobbying efforts and increased violence within Puerto Rico, and due to generally accepted principles of democracy and self-determination within the federal government, a variety of constitutional solutions to address Puerto Rico's problems were considered. One option was to allow the territory independence. But neither the United States nor, as it turned out, most Puerto Ricans, wanted this. For the United States, there were clear military advantages to having a foothold in the Caribbean on the strategic approaches to the Panama Canal. As for the Puerto Ricans, many in the dominant liberal party who had initially supported secession quickly changed their minds when it became clear that independence would mean a significant loss of U.S. trade advantages (because of the U.S.–Puerto Rican customs union) and aid—even if that aid was not at the same level as elsewhere in America.

With regard to political assimilation into the U.S. federation as a state, members of Congress feared introducing a nationalistically distinct territory into the Union. Similarly, the majority of Puerto Ricans themselves rejected political assimilation—even if it meant that they would be a member unit in the federation. As jurist José Trías Monge wrote, "Puerto Rico spent decades in the melting pot, at high heat, and never melted."[16] If a compromise between full independence and assimilation was to be reached, some other solution would be needed. Ironically, the drafters of the new political form that Puerto Rico would adopt looked to the empire that had previously unsuccessfully imposed its will on the thirteen colonies for inspiration: Great Britain. Puerto Rican Governor Muñoz Marin and Resident Commissioner Antonio Fernos Isern used the 1931 Statute of Westminster as a model for drafting Public Law 600, which was the constitutional document that set the stage for the rest of Puerto Rico's new constitutional order.[17] The Statute of Westminster was a British law that codified many of the preexisting unwritten constitutional rules governing relations between the British central government and the British dominions. Section 2 of the Statute laid out in legal terms

[16] Ibid., 120.
[17] Ibid., 110.

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that the dominions have extraterritorial legislative powers. Section 3 made it clear that no laws of any dominion would be rendered void because they contradicted statutes of the British Parliament. And Section 4 formalized the rule that "no act of Parliament of the United Kingdom" would "extend, or be deemed to extend, to a Dominion as part of the law of that Dominion" without its permission.[18]

Hence, efforts were made from 1950–1952 that led to an unprecedented form of self-governance for Puerto Rico. The process that ultimately led to Puerto Rico's new status mirrored the series of events that occur when new territories join the U.S. federation as federal member units (states). First, Congress passed an "enabling act," which empowered the Puerto Ricans to draft their own constitution.[19] The enabling act (Public Law 600) also repealed portions of the 1917 Jones Act.[20] Second, Puerto Rico's population elected delegates to attend a constitutional convention that drafted a new constitution.[21] And third, Congress approved the locally created constitution through Public Law 447.[22]

Although the establishment of the new government went through the same three steps that take place when a state is added to the Union, it was clear that what was being created was not a state at all, but something that was without precedent in the history of American jurisprudence. In 1976, the U.S. Supreme Court affirmed, in a non–legally binding (dicta) statement, that "Puerto Rico occupies a relationship to the United States that has no parallel in our history."[23] One of the only legal articulations of a possible limitation on congressional plenary power in such documents is a vague passage in the preamble to Public Law 600 that makes the following statement: "[F]ully recognizing the principle of government by consent, this Act is now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption."[24] A similarly rare and vague statement is made in the first of two uses of the "compact" notion in Puerto Rico's constitution, which states that "the Commonwealth of Puerto Rico is hereby constituted. Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America."[25]

[18] For the full text of the 1931 Statute of Westminster, see K.C. Wheare, *The Statute of Westminster and Dominion Status*, 4th ed. (Oxford, UK: Oxford University Press, 1949), 308–312.

[19] Public Law 600, ch. 446, 64 Stat. 319 (1950).

[20] Leibowitz, *Defining Status*, 165.

[21] Constitution of the Commonwealth of Puerto Rico, February 1952, accessed at http://fopuertorico.org/constitu.shtml, 1 September 2005.

[22] Public Law 447 of 3 July 1952, ch. 567, 66 Stat. 327 (1952).

[23] *Examining Board v. Flores de Otero* (1976), 426 U.S. 572, 494–596.

[24] U. S. Public Law 600, Preamble.

[25] Constitution of Puerto Rico, Article 1, Section 1.

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Three Views on Puerto Rico's Constitutional Status

With respect to the status of constitutional relations between the U.S. central government and the peripheral territory of Puerto Rico after 1952, there are three schools of thought.

Compact Theorists

Members of the first are what have been called the compact theorists.[26] This school argues that Congress legally does not have plenary power over Puerto Rico. Compact theorists argue that the preamble to Public Law 600, which refers to "government by consent" and "a compact" helps create a legally binding obligation for Congress not to arbitrarily interfere in the territory. In accordance with this, similar wording is reiterated in the second and last reference to the word "compact" in Puerto Rico's constitution, which states that "any amendment or revision of this constitution shall be consistent with . . . Public Law 600, Eighty-first Congress, adopted in the nature of a compact."[27] It is further argued that the legislative history of Public Law 447 (in which Congress approved of Puerto Rico's locally drafted constitution) indicates that it was clear to the congressmen while they were drafting the law that they were binding themselves from future interference in the territory. Finally, proponents of this school are keen to point out the significant number of lower court rulings that attest to Puerto Rico's domestic sovereignty in judge-made common law.[28] In 1985, for instance, the First Circuit Federal Court declared that

> In 1952, Puerto Rico ceased being a territory of the United States subject to the plenary powers of Congress as provided by the Federal Constitution. The authority exercised by the federal government emanated thereafter from the compact itself. Under the compact between the people of Puerto Rico and the United States, Congress cannot amend the Puerto Rico Constitution unilaterally, and the

[26] On this view, see, for instance, Rafael Hernández Colón,"The Commonwealth of Puerto Rico: Territory or State?" *Revista del Colegio de Abogados de Puerto Rico* 19 (May 1959): 207–258; Leibowitz, *Defining Status*, 172–175; Arnold H. Leibowitz, "The Applicability of Federal Law to the Commonwealth of Puerto Rico," *Georgetown Law Journal* 56 (December 1967): 219–271; and Calvert Magruder, "The Commonwealth of Puerto Rico," *University of Pittsburgh Law Review* 15 (Fall 1958): 1–33. For a discussion of this view in the Congressional Hearings that ultimately produced Public Law 447, see Hearings Before the Senate Committee on Interior and Insular Affairs (1952), S.J. Res. 151, 82nd Cong., 2d sess., 40–49. For a somewhat misleading retreat from pure compact theory, which confirms that Puerto Rico has domestic sovereignty and the doctrine of mutuality is intact, but nevertheless argues that the territory is still somehow a "colony," see José Trías Monge, "Injustice According to Law: The Insular Case and Other Oddities" in Christina Duffy Burnett and Burke Marshall, eds., *Foreign in a Domestic Sense,* 233.

[27] Constitution of Puerto Rico, Article 7, Section 3.

[28] See for instance *Figueroa v. Puerto Rico* (1953), 232 F.2d 615, 620 (1st Cir.) and *United States v. Lopez Andino* (1987), 831 F.2d 1164 (1st Cir.), cert. denied, 486 U.S. 1034 (1988); Leibowitz, *Defining Status*, 165–185.

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> government of Puerto Rico is no longer a federal government agency exercising delegated power.[29]

And as recently as 1997, the First Circuit Federal Court even refused to discuss Puerto Rico's status, since it was deemed to be well established: "It is not appropriate for this Court to revisit and modify the long-held and well-settled doctrine regarding the constitutional nature of the Commonwealth of Puerto Rico."[30]

Territorial Supremacy Theorists

The second, more widely accepted, school of thought is represented by what can be called the territorial supremacy theorists, who claim that Congress' plenary power is legally intact and consequently exercisable.[31] Members of this school emphasize the overriding legal force of the territorial clause of the U.S. Constitution. Indeed, no amendment has been made to the U.S. Constitution that attests to a principle of mutual consent. No statute clearly articulates it. And no U.S. Supreme Court has made legally binding declarations that verify it. Consequently, according to such views, "no word other than 'colonialism' adequately describes the relationship. . . ."[32]

Proponents of this school reject any notion that the vague phrases in the preamble of Public Law 600 and in the two references to "compact" in Puerto Rico's constitution have any binding force. The preamble's reference to "government by consent" can easily be interpreted as a general articulation of the legitimizing effects of the democracy that Puerto Rico would establish. The indistinct reference to the act being "in the nature of a compact" also gives little assurance about what credibility such a compact may have. Indeed, in its history, the United States has engaged in a significant number of treaty-like "compacts" with various Indian tribes and the territories associated with them, but has had an infamous record of not honoring them, even when submitted to judicial scrutiny.[33]

Territorial supremacy theorists also counter the compact theorists' claims about Public Law 447 by pointing out that the drafting history of Public Law 600 (the enabling legislation that allowed for Puerto Rico to draft its own constitution) makes very clear that the congressmen and Puerto Rican

[29] *United States v. Quinones* (1985), 758 F.2d 40, 42 (1st Cir.).

[30] *United States v. Vega Figueroa* (1997), 984 F. Supp. 71. 79 (D. Puerto Rico).

[31] See for instance, Torruella, *The Supreme Court and Puerto Rico*, 167–200; Torruella "One Hundred Years of Solitude," 241–250; Helfeld, "How Much of the United States Constitution and Statutes Are Applicable to the Commonwealth of Puerto Rico?" 452; Cabranes, "Puerto Rico: Out of the Colonial Closet," 68; Aleinikoff, *Semblances of Sovereignty*, 77; Fliess, "Puerto Rico's Political Status," 652, 639; Lawson and Seidman, *The Constitution of Empire*, 124–138.

[32] Cabranes, "Puerto Rico: Out of the Colonial Closet," 68.

[33] See Aleinikoff, *Semblances of Sovereignty*, 95–121. See also *Lone Wolf v. Hitchcock* (1903) 23 S.Ct. 216 U.S.

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representatives (such as Muñoz Marin) that were involved had full knowledge that they were not binding Congress from future intervention in the territory. The confused drafting history of Puerto Rico's legal order from Public Law 600 to Public Law 447, therefore, negates the compact theorists' arguments.

Finally, proponents of this school have their own set of lower court rulings that they can point to that also seem to sustain the notion of Puerto Rico's full legal vulnerability to the unilateral whim of Congress.[34] In one 1993 case, for example, the Eleventh Circuit Court made it clear that Congress' powers are legally supreme over Puerto Rico, declaring that "Congress may unilaterally repeal the Puerto Rican Constitution . . . and replace [it] with any rules or regulations of its choice."[35]

Conventional Entrenchment Theory

The third school of thought, which is introduced here, is what can be called conventional entrenchment theory. It claims that Congress' plenary power is indeed legally intact but nevertheless nullified and rendered inoperable by conventional rules. Like the second view, it argues that Congress' *legal* plenary power has not been erased and is still in existence. Like the first view, it nevertheless argues that Congress' plenary power is nullified, albeit through conventional rather than legal means. Unlike both of these views, however, it emphasizes the power and significance of unwritten constitutional rules that are articulated through informal agreements between leaders, U.S. governmental declarations, dicta (non–legally binding) statements by the judiciary, and lower-court rulings (drawing on unwritten rules) that attest to a duty of mutual assent. It is argued here that these statements articulate an informal constitutional rule that renders the territorial clause of the U.S. Constitution frozen with respect to Puerto Rico. In place of the nullified constitutional provision is the rule that the central government ought not to usurp Puerto Rico's 1952 arrangement without its permission. Before describing the specific basis for the conventional rules that constitutionally entrench some of Puerto Rico's powers vis-a-vis the United States, a brief description will be provided of convention and conventional entrenchment.

In brief, what are "conventions"? Scholarly analysis of the sometimes vague, yet critically important, unwritten constitutional rules known as "conventions" is more widely known and discussed in well-established democ-

[34] On this view in the courts see, *Perez de la Cruz v. Crowley Towing and Transp. Co.* (1986), 807 F.2d 1084, 1088 (1st Cir.), cert. denied, 481 U.S. 1050 (1987); *United States v. Sanchez* (1993), 992 F.2d 1143, 1152-53 (11th Cir.), cert. denied, 510 U.S. 1110 (1994); *United States v. Lopez Andino* 1164, 1173; and *United States v. Rivera Torrez* (1987), 826 F.2d 151, 154 (1st Cir.). Aleinikoff, *Semblances of Sovereignty*, 77.

[35] *United States v. Sanchez*. Also quoted in Aleinikoff, *Semblances of Sovereignty*, 76.

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racies other than the United States, such as the United Kingdom.[36] Discussion of unwritten constitutional rules in the U.S. context is, however, nothing new.[37] Some of the most well-cited scholars in the modern literature on conventions have referred to conventional rules in different ways. A.V. Dicey referred to them as "customs, practices, maxims, or precepts" that constitute a type of binding "constitutional or political ethics."[38] Canadian scholar Eugene Forsey described them as "the acknowledged, binding, extra-legal customs, usages, practices and understandings by which our system of government operates."[39] Geoffrey Marshall, in his seminal book, *Constitutional Conventions*, summarizes the relative consensus in the literature on the most basic meaning of convention. He defines conventions as "non-legal rules of constitutional behavior . . . that define major non-legal rights, powers and obligations of office-holders in the three branches of government, or the relations between organs of government."[40] Conventions are not only applicable to states such as Canada, New Zealand, Israel, and the United Kingdom, but they also apply to virtually all states, including the United States.

Here the word "constitution" is used to describe a country's government-regulating and government-establishing rules.[41] Like some other sources in the literature, "big C" Constitution is used to indicate America's constitutionally entrenched written Constitution and its amendments, and "little c" constitution is used to express the meaning of government-establishing and -regulating rules in general, which include written rules (including the constitutionally entrenched "big C" Constitution) as well as unwritten rules.[42]

[36] Marshall, *Constitutional Conventions*; Munro, "Laws and Conventions Distinguished"; Bogdanor, *The Monarchy and the Constitution*; Brazier, *Ministers of the Crown*; and Brazier, *Constitutional Practice*.

[37] Tiedeman, *The Unwritten Constitution*; Bryce, *American Commonwealth*, 391–407; Wilson, "American Constitutional Conventions," 645; Wilson, *Constitutional Government in the United States*; Horwill, *Usages of the American Constitution*; Munro, *Makers of the Unwritten Constitution*, 1–23; Grey, "Do We Have an Unwritten Constitution?" 703–718; Grey, "Origins of the Unwritten Constitution," 843–893; Grey, "The Original Understanding and the Unwritten Constitution"; Sherry, "The Founders' Unwritten Constitution," 1127–1177; Ackerman, *We The People*, 44–50, 81–130; Strauss, "Common Law Constitutional Interpretation," 877; Whittington, *Constitutional Construction*; Fallon, "Judicial Legitimacy and the Unwritten Constitution," 119; Fallon, *Implementing the Constitution*; Foley, *The Silence of Constitutions*; and Fisher, *American Constitutional Law*.

[38] A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 8th ed. (Indianapolis, IN: Liberty Fund, 1885 [1982]).

[39] Eugene A. Forsey, *The Royal Power of Dissolution of Parliament in the British Commonwealth* (Toronto: Oxford University Press, 1943).

[40] Marshall, *Constitutional Conventions*, 3, 210.

[41] Wheare, *The Statute of Westminster and Dominion Status*, 6.

[42] Fallon, *Implementing the Constitution*, 112. It may be instructive to note that the total written constitutional documents of the United States include those that exist at the federal, state, and territorial levels.

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Just as custom and treaties go some way to bind actors in the anarchy of the international system, so too do precedents, principles, and informal agreements bind actors within America's constitutional system. Unwritten constitutional rules establish informally binding norms of behavior among U.S. leaders. They help regulate the division of power between Congress and the executive over foreign affairs.[43] They confer powers upon governmental branches, such as the Congressional Commerce Clause powers that are arguably derived from constitutional norms rather than exclusively from the written text of the Constitution.[44] They serve as an important source from which the judiciary draws to formulate some of their most significant judgments.[45] And, as discussed in greater detail here, they make the powers that were formally allocated to Puerto Rico in 1952 very difficult to change.

Just as with written rules, conventions are made up of their vehicle of rule articulation (the outward manifestation of the rule) and the mechanisms that enforce the rule and therefore make it real and credible. Like written rules, conventions may be broken and violated. But as long as the rule has a *reason*, is *articulated* by some means (whether by precedents, generally accepted principles, or informal agreements), and is supported by an informal *enforcement* mechanism, it can be said that a conventional rule exists.[46] Informal enforcement mechanisms such as deeply held political mores, political difficulties, and/or custom (political inertia through repeated precedent) play an effective role in creating a sense of mutual expectation and constitutionally oriented obligation.

What is "conventional entrenchment" and how is Puerto Rico comparable to the British dominions? Conventional entrenchment refers to an arrangement in which constitutional (government-establishing or government-regulating)

[43] Harold Koh, *The National Security Constitution: Sharing Power After the Iran-Contra Affair* (New Haven, CT: Yale University Press, 1990); Gerhard Casper, "Constitutional Constraints on the Conduct of Foreign and Defense Policy: A Nonjudicial Model," *University of Chicago Law Review* 43 (Spring 1976): 463–498; G. Edward White, "The Transformation of the Constitutional Regime of Foreign Relations," *Virginia Law Review* 85 (February 1999): 1–150; Joel R. Paul, "The Geopolitical Constitution: Executive Expediency and Executive Agreements," *California Law Review* 86 (July 1998): 671–774.

[44] Bruce Ackerman, "The Storrs Lectures: Discovering the Constitution," *Yale Law Journal* 93 (May 1984): 1013–1072; Richard Epstein, "The Proper Scope of the Commerce Power," *Virginia Law Review* 73 (November 1987): 1387–1456; and Fallon, *Implementing the Constitution*, 115.

[45] For examples of this, see Grey, "Do We Have an Unwritten Constitution?" 703–718; Strauss, "Common Law Constitutional Interpretation," 877; Sanford Levinson, *Constitutional Faith* (Princeton, NJ: Princeton University Press, 1998); Jed Rubenfeld, "Reading the Constitution as Spoken," *Yale Law Journal* 104 (March 1995): 1119–1186; and Fallon, *Implementing the Constitution*.

[46] The aforementioned three-part assessment of identifying a conventional rule is a modification of Sir Ivor Jennings's tripartite account of the establishment of convention accepted by the Canadian judiciary in 1981. In Sir Ivor's assessment, one can identify a convention if there are precedents, reasons for the rule, and actors who feel themselves to be bound by the rule. Sir W. Ivor Jennings, *The Law and the Constitution*, 5th ed. (London: University of London Press, 1959), 134–136. See also Marshall, *Constitutional Conventions*, 10.

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powers that are allocated to a particular entity (in this case Puerto Rico) are rendered very difficult to change because of conventional (unwritten) rather than formal legal rules. Just as the horizontal branches of government within a state can be governed by constitutional conventions, the vertical institutions of a state, where there is a division of power between center and periphery, can be governed by conventions as well. In his leading study on constitutional conventions, Geoffrey Marshall distinguishes between the uses of convention as it applies within Britain between branches of government and between central and peripheral governments.[47] A series of colonies within the British Empire were, over time, granted credible final decision-making powers by convention. These territories became known as the British dominions and included such places as Canada (1846) and then subsequently Australia (1855), New Zealand (1856), Ireland (1921), and South Africa (1910).

A detailed description of the dominions is of course beyond the scope of the present analysis and is already covered very well by the deep and rich literature on the topic.[48] By way of comparison to Puerto Rico, a few characteristics of the dominions are, however, worth emphasizing. First, before these entities were provided with power over foreign affairs and eventually military powers after World War I—and long before they were formally granted final decision-making powers in the 1931 Statute of Westminster—the dominions had been enjoying credible and widely recognized final decision-making powers by constitutional convention. Informal rule enforcement mechanisms such as political incentives, political inertia, and deeply held political principles are the forces that have consistently shielded the British Parliament from interference by the monarch, who still legally controls the military and can unilaterally dismiss the Parliament and the prime minister.[49] Conventional rules, however, demand that these legal powers of the monarch be exercised by her ministers who command a majority within Parliament.[50] These same forces shielded the self-governing dominions from interference by the British central government. The political incentives

[47] Marshall, *Constitutional Conventions*, 169–179.

[48] On the conventionally entrenched status of the British dominions, see, for instance, H.V. Evatt, *The King and His Dominion Governors*, 2nd ed. (London: Frank Cass & Co. Ltd., 1967); Forsey, *Royal Power of Dissolution*; Wheare, *The Statute of Westminster*; Stephen Leacock, "Responsible Government in the British Colonial System," *American Political Science Review* 1 (May 1907): 355–392; Arthur Berriedale Keith, *Responsible Government in the Dominions*, 2nd ed. (Oxford, UK: Clarendon, 1928); Arthur Berriedale Keith, *The Governments of the British Empire* (London: Macmillan, 1935); Arthur Berriedale Keith, ed., *Speeches and Documents on the British Dominions 1918-1931: From Self-Government to National Sovereignty* (Oxford, UK: Oxford University Press, 1932); Arthur Berriedale Keith, ed., *British Colonial Policy, 1763-1917*, 2 vols. (London: G. Cumberlege, 1948). The text of the 1931 Statute of Westminster is reprinted in Wheare, *The Statute of Westminster*, 308–312.

[49] Eric Barendt, *An Introduction to Constitutional Law* (Oxford, UK: Oxford University Press, 1998), 112.

[50] Ibid.

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were made available by the specter of revolution, imperial fragmentation, and lobbying by elements from the peripheral territories. The political inertia was supplied by the strong central government tradition of adhering to precedent. And the deeply held political principles were furnished by the abhorrence that had evolved—especially after the loss of the thirteen North American colonies—of usurping democracy in territories settled by British citizens. Because of such informal enforcement mechanisms, these territories would have powers that were real, credible, and very difficult to take away. While not being fully independent states, they would attain their own internal self-determination. Under such circumstances, these territories ascended from being mere colonies to becoming federacies (partially sovereign arrangements that are not part of any federation or unitary system). As will be described in more detail below, while the specific enforcement mechanisms that provide for Puerto Rico's informal entrenchment vis-a-vis the United States are somewhat different from those of the British dominions, conventional rules nevertheless make the arrangement very difficult to change.

Apart from some rare exceptions, the historical record shows that Britain's powerful legal rules were indeed held at bay by conventional rules with great consistency. The adherence to such convention is articulated in the well-established precedents of noninterference by the central state and in the informal agreements that were reached in the many conferences attended by imperial and dominion representatives. Hence, by applying its monarch-limiting rules to itself vis-a-vis its territories, Britain achieved the compromise of nullifying its coveted parliamentary sovereignty on some issues without providing full independence. As Geoffrey Marshall explained, "One function for convention has always been that of controlling the impact of the traditional legal doctrine of the supremacy of Parliament."[51] The operation of binding convention rendered the strict law statutes of the British Parliament as they pertained to the dominions inoperable or frozen. As will be argued below, a similar state of affairs also applies to the relations between Puerto Rico and the United States.

Second, it should be emphasized that rather than formally abrogating the British Parliament's existing laws, which had established the centrally controlled institutions within these one-time colonies, the new form of dominion government would superimpose a new layer of unwritten conventional rules on the preexisting colonial structure. These rules would shift power from the autocratic governor to the territorial cabinet and legislature and would suspend, freeze, and nullify the powers of the central state to interfere in the domestic affairs of the dominion. Hence, all of the key preexisting colonial institutions, including the centrally appointed governor-general, the democratically elected legislature, and the cabinet, would therefore remain. And all of the legal rules that had provided for Britain's autocratic rule over the territories would also be

[51] Marshall, *Constitutional Conventions*, 201.

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left unchanged. No moves in the direction of legally nullifying them were taken until 1931. All of these dominions still retained written constitutional laws that made it clear that a territory was still in significant ways subject to the omnipotence of the central authority.[52] According to such *legal* rules, acting through its governor in the territory, the British government retained all vital powers of constitutional change.[53] It could arbitrarily strip leaders of their powers by dismissing them;[54] it could reserve (suspend) and disallow (annul) duly passed legislation;[55] it could make invalid and void any and all laws that contradicted the British Parliament's laws explicitly applying to a territory;[56] it could dissolve the territorial parliament;[57] it could overrule judicial decisions made in the territory; and it could control local military forces and foreign relations. What would change, however, was that with the establishment of "responsible government" (or cabinet government), the powers of the central state would now be nullified with respect to almost all domestic issues.

Third, although the dominions did eventually all become independent states, the initial arrangements that were established for these territories were not created to be interim steps toward statehood, as some have implied.[58] They were instead designed to hold the British Empire together and stem the tide of territorial fragmentation that largely began with the secession

[52] For many of the key constitutional documents for the dominions of Canada, Australia, South Africa, New Zealand, and Newfoundland, including the Letters Patent, Instructions, Commissions, and Dormant Commissions, see Keith, *Responsible Government in the Dominions* (1912), 1561–1613.

[53] Keith, *Responsible Government in the Dominions* (1928), 1146–1147.

[54] One of the Australian constitutional documents, the 1900 Letters Patent, which directly mirrors—in many cases word for word—the other "Letters Patent" of the other dominions, makes this clear. See, for instance, Article IV of the 1900 Australian Letters Patent, reprinted in Keith, *Responsible Government in the Dominions* (1912), 1570.

[55] With the power of disallowance, the monarch (on the advice of British ministers) could disallow (annul) laws passed by the territorial legislature. With respect to the powers of disallowance, see the 1852 New Zealand Act, Section 55; the 1867 British North America Act (Canada), Section 56; the 1900 Constitution of the Commonwealth of Australia, Section 59; and the 1909 South Africa Act, Section 65. See also the Report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation (1929) reprinted in Keith, ed., *Speeches and Documents*, 175. Under the similar but distinct power of reservation, the dominion's governor-general could choose to not give his assent to a bill duly passed by the dominion legislature and instead bring it before the British monarch, who would decide on its fate with the advice of British ministers. With respect to such legal powers of reservation, see the 1852 New Zealand Act, Sections 55 and 59; the 1867 British North America Act (Canada), Sections 55 and 57; the 1900 Constitution of the Commonwealth of Australia, Sections 58 and 60; the 1909 South Africa Act, Sections 64 and 66; and the Constitution of the Irish Free State, Article 41. See also Arthur Berriedale Keith, "Report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation" in Keith, ed., *Speeches and Documents*, 173–205.

[56] This was set down in the British Parliament's 1865 Colonial Laws Validity Act. See Keith, "Report of the Conference," 183–187.

[57] See for instance Article V of the 1900 Australian Letters Patent, reprinted in Keith, *Responsible Government in the Dominions* (1912), 1570–1571.

[58] On such a suggestion see, Fliess, "Puerto Rico's Political Status," 652.

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of the thirteen American colonies. The shattering of other empires, the history of nationalistic rebellion within settled colonies, the failure of other means of constitutional accommodation within the British Empire, the attractive compromise between full assimilation and independence, and the early and persistent lobbying of the Canadians in the mid to late nineteenth century were some of the key reasons for the emergence of federacy in Canada and, by association, the federacies that emerged elsewhere within the British Empire.

Hence, the status of the British dominions in the late nineteenth and early twentieth centuries was similar in many ways to that of Puerto Rico today. They were largely self-governing internally, while foreign and military powers were in the hands of the central government. They were not conceived as interim arrangements in lieu of full independence. And their powers were entrenched by conventional means despite the fact that legal rules contradicting the unwritten rules were still on the books.

Puerto Rico's conventional entrenchment. Similar to the constitutional relationship between the dominions and the British government, legal documents (such as the territorial clause in the U.S. Constitution) seem to say one thing about the U.S.–Puerto Rican relationship, but the informal agreements, principles, and increasingly, with the course of time, precedents of noninterference convey a much different constitutional picture.

One set of documents that discusses the new conventionally entrenched relationship is the 1952 exchange of letters between Puerto Rican Governor Muñoz Marin and U.S. President Harry Truman after Puerto Rican representatives finished drafting their own written constitution. In his letter, Muñoz Marin emphasized the change in Puerto Rico's status by making it clear that the territory's new status was "based on bilateral action through free agreement," which "wipe[d] out all trace of colonialism."[59] Truman's reply affirmed this and indicated that "no government can be invested with a higher dignity and greater worth than one based upon the principle of consent."[60]

An even more explicit articulation of Puerto Rico's special status came in 1953, when the United States went to the United Nations to remove Puerto Rico from the list of "non-self-governing territories" (colonies). Puerto Rico's presence on this list meant that it was a colony under the supervision of the UN Trusteeship Council. After clearing his statement with the State Department, U.S. delegate Frances P. Bolton made the following statement, which underscored Puerto Rico's new noncolonial status:

> The previous status of Puerto Rico was that of a territory subject to the full authority of the Congress of the United States in all governmental matters. The

[59] Reprinted in Monge, *Puerto Rico*, 115.
[60] House Doc. 435, 82nd Cong., 2nd sess., 4.

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> previous constitution of Puerto Rico was in fact a law of the Congress of the United States, which we called an Organic Act. Only Congress could amend the Organic Act of Puerto Rico. The present status of Puerto Rico is that of a people with a constitution of their own adoption, stemming from their own authority, which only they can alter or amend. The relationships previously established also by a law of the Congress, which only Congress could amend, have now become provisions of a compact of a bilateral nature whose terms may be changed only by common consent.[61]

Moreover, a number of federal court cases have also affirmed the barriers that prevent Congress from making unilateral changes to the arrangement.[62] While the lower federal courts arrived at common-law conclusions regarding the domestic sovereignty of Puerto Rico, they nevertheless arguably drew on unwritten constitutional rules as the source of their judgments. Such a status was also confirmed in non–legally-binding dicta in 1982 by the U.S. Supreme Court that confirmed that "Puerto Rico, like a state, is an autonomous political entity, 'sovereign over matters not ruled by the Constitution . . . .'"[63]

Convention in American courts as distinct from British courts. In connection with such court rulings, it may be instructive to say a few words about the differences between the operation of convention in American courts as opposed to those in Britain. It is important to discuss this here not only because Puerto Rico is being compared to the historic British dominions, but also because some British constitutional scholars, following the lead of the great British jurist A.V. Dicey, have maintained that conventions are distinct from laws because they are not legally enforceable or recognizable in courts.[64] Dicey clearly states that conventions "are not in reality laws at all since they are not enforced by the Courts."[65] Similarly, other scholars, such as A. Berriedale Keith, discuss conventions as "without legal force and of which the law courts can take no notice."[66] Hence, like oil and vinegar, conventional rules and legal rules

[61] Report by Hon. Frances P. Bolton and Hon. James P. Richards on the Eighth Session of the General Assembly of the United Nations, Committee on Foreign Affairs, 83rd Cong., 2nd sess., (Washington DC: U.S. Government Printing Office, 26 April 1954), 241. See also Monge, *Puerto Rico*, 123.

[62] See, for instance, *Figueroa v. Puerto Rico* (1953), 232 F.2d 615, 620 (1st Cir.); *United States v. Lopez Andino* (1987), 831 F.2d 1164 (1st Cir.), cert. denied, 486 U.S. 1034 (1988); *United States v. Quinones* (1985), 758 F.2d 40, 42 (1st Cir.); *United States v. Vega Figueroa* (1997), 984 F. Supp. 71. 79 (D. Puerto Rico). Leibowitz, *Defining Status*, 165–185.

[63] *Rodriguez v. Popular Democratic Party* (1982), 457 U.S. 1, 8.

[64] Munro, "Laws and Conventions Distinguished," 218; O. Hood Phillips, "Constitutional Conventions: A Conventional Reply," *Journal of the Society of Public Teachers of Law* 8 (December 1964): 60–70.

[65] Dicey, *Introduction to the Study of the Law of the Constitution*, 23.

[66] Keith, *Governments of the British Empire*, 6.

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simply do not mix in British courts. This, however, is not the way things work in America. Far from not recognizing conventional rules, U.S. courts embrace them and incorporate them into their corpus of common law. When such mergers take place, the resulting judicial decision is a semi-legal hybrid between a non–legal-unwritten source and a legal-written, common-law outcome. The relatively clear and neat distinction between unwritten and written rules applicable in British courts is consequently not tenable in American courts. Because of their hybrid nature and unwritten source, such rulings are also added to the corpus of conventional rules, albeit with certain reservations due to their partial written reality.

In the UK, Parliament is legally sovereign. Through its statutes, Parliament can make and unmake constitutional rules. It is therefore the highest source of constitutional authority. The judiciary in the United Kingdom has accepted this doctrine of Parliamentary sovereignty, and, with relative faithfulness, applies Parliament's laws with very little of their own constitutional interpretation (which Parliament could, in any case, overrule by a simple majority decision). British courts dutifully stick to the written constitutional rules as they are made by Parliament and leave the unwritten rules to the politicians.[67] With regard to Britain, therefore, one can, by and large, draw a clear and neat distinction between common law (judge-made law), as a form of strict law, which is distinct from convention, as a completely different form of unwritten constitutional rule that is not recognized by the courts.

Things, however, are different in the United States. The Constitution, rather than any one branch of government, is the highest source of authority. And while Congress (through statutes) or the executive (through executive orders) can make some government-regulating and government-establishing (that is, "small c" constitutional) rules through strict law, it is the judiciary that has been accepted as the ultimate guardian to determine what is constitutional and what is not. Unlike their British counterparts, courts in America, therefore, frequently put their own interpretive gloss on the Constitution, even drawing on doctrines that are nowhere to be found in the constitutional text.

This is illustrated by the fact that in numerous cases, the U.S. judiciary has arguably favored unwritten principles even above the explicit text of the written Constitution. In many of the seminal judicial cases in U.S. history (such as *Dred Scott*, *Lochner*, *Carter Coal*, *Brown v. Board of Education*, *Baker v. Carr*, *Furman v. Georgia*, and *Roe v. Wade*), the Supreme Court has arguably sidestepped a close, technical interpretation of the explicit text of the Constitution.[68]

[67] While the deeply held principle that Parliament is sovereign is itself a conventional rule, it is the basis for the clear division between convention and strict law in the courts. This deeply held principle is, however, changing to some degree with the application of European human rights legislation.

[68] Grey, "Do We Have an Unwritten Constitution?" 703–718.

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In place of this, it has relied on deeply held principles not articulated in the explicit text of the written Constitution.[69]

In some cases, under the pretext of applying a vague stipulation within the written Constitution, such as the due process or equal protection clauses, courts will use principles that are simply not discussed in the text of the founding document. In *Roe v. Wade*, for instance, the Supreme Court derived a "right of privacy," regarding a woman's decision whether to terminate her pregnancy, from the vagaries of "the Fourteenth Amendment's concept of personal liberty and restrictions upon state action."[70] In other cases, the courts openly and abundantly make it clear that they are not basing their judgment on the text of the Constitution at all. In *Shapiro v. Thompson*, for instance, the Court openly stated that there was "no occasion to ascribe the source of this right to . . . a particular constitutional provision."[71] In such cases, broad textual provisions within the written Constitution are used by decision makers to draw upon shared national values and principles that are not in the explicit text of the Constitution itself.[72] These principles and values bind decision makers (in this case judges) to make decisions outside of the provisions of the written Constitution. Indeed courts, such as the U.S. Supreme Court, who, on occasion, apply unwritten constitutional rules, might also suffer from a kind of embarrassment or fear if they were to justify their rulings by anything other than the democratically endorsed and formally legitimate body of written constitutional rules.[73] To extinguish the possibility of a wider delegitimizing political and public debate, such courts therefore remain silent with regard to the occasional unwritten constitutional underpinnings of their judgments, or they speciously try to invoke written rules that have no clear relationship to their conclusions.[74]

It is, however, important to note that the application of unwritten constitutional rules within U.S. courts is by no means a ubiquitous practice. Rather, the likelihood that such rules will be applied is often a matter of the constitutional philosophy of the justice applying the ruling. A significant number of justices no doubt still reject the actions of their colleagues, favoring instead a more technical interpretation, based on original intention.

Some Implications of Puerto Rico's Conventional Entrenchment

Provided that a court did not intervene by mixing unwritten constitutional rules with its own strict common law, if tomorrow Congress unilaterally and arbi-

[69] Ibid.
[70] *Roe v. Wade* (1973) 410 U.S. 113, 153.
[71] *Shapiro v. Thompson* (1969) 394 U.S., 618, 630.
[72] Grey, "Do We Have an Unwritten Constitution?" 707.
[73] Fallon, "Judicial Legitimacy."
[74] Ibid.

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trarily used its legal powers under the territorial clause to abolish Puerto Rico's powers, to place its governor under arrest, and to declare a state of martial law, it would (as argued here) be entirely within its legal authority to do so. Such an action, however, would be just as absurd as the British queen exercising her legally existent authority to control the military, abolish Parliament, and dismiss the prime minister. Similarly, it would be just as absurd (if not more so) for the U.S. president to use his legally existent power as Commander in Chief to violently bully Congress. While Congress' exercise of its legal plenary power over Puerto Rico would not violate America's "big C" Constitution, it would nevertheless be an unconstitutional violation of America's "little c" constitution.

The commitments made by the executive branch in and around 1952, the allocation of Puerto Rico's final decision-making powers by Congress after a local referendum within the territory, the deeply held repugnance toward treating Puerto Rico like a colony, the influence of the territory's lobby and their political allies, and the confirmation in numerous court cases of the inapplicability of the Constitution's territorial clause have all put a stamp of credibility and informal entrenchment on Puerto Rico's constitutional laws. These commitments have generated powerful moral and political forces that have not been ignored (and are highly unlikely to be ignored in the future) by the various branches within the central government, whether or not they are legally binding.

A case in point of the forces that would enter onto the radar screen of many U.S. politicians with regard to central government attempts at unilateral interference in the territory against its will was illustrated by the U.S.–Puerto Rican struggle over the Puerto Rican island of Vieques. This island, just off of Puerto Rico's eastern coast, was used for many years as a site for U.S. military war games and bombing practice, rendering much of the island uninhabitable and polluted with chemicals and radioactivity. After the accidental killing of a Puerto Rican security guard by a stray bomb in 1999, many Puerto Ricans began to see such military operations as an affront to their domestic sovereignty and national identity. Why, they asked, was the military choosing Puerto Rican territory for its noxious target practice? Why not some other place on the mainland? Powerful members of Congress such as John Warner (R-VA) and James Inhofe (R-OK) argued that U.S. security interests would be harmed if the military facility on Vieques was abandoned. Senior military leaders such as General Wesley Clark were also strongly in favor of retaining the base.

In the end, however, the central government surrendered to the sentiments of the Puerto Rican people, their leaders, and their political allies. While there were powerful leaders who favored continued operations on Vieques to uphold national security interests, there were many others who strongly disagreed with actions that trampled on Puerto Rican internal self-determination. The latter expressed a desire to sacrifice the interests of the central government in favor of protecting the principle of Puerto Rican autonomy. This view was articulated by

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U.S. Congressman Robert Menendez (D-NJ), who described the implications of a military withdrawal from Vieques:

> Might it be an inconvenience? Yes. Might it take some time? Yes. Might it cost money? Yes.... So why should the Navy permanently cease all live and inert ammunition exercises and, therefore, ultimately leave the island and return it to the people of Vieques and Puerto Rico? I think the answers can be found in the voices of the people of Vieques I met and in the sights I observed.[75]

Added to the repugnance felt among many U.S. leaders toward violating Puerto Rican autonomy, political difficulties also threatened to assail President George W. Bush. When much of the Hispanic electorate within the United States, which now numbers nearly 12 percent of the American population, began to adopt a sense of outrage over Vieques similar to that of the Puerto Ricans, President Bush's chief strategist, Karl Rove, fearing the implications this would have on the next election, advised the President to end operations on the island. Accordingly, in 2003, military operations on Vieques were brought to an end. Even if the President was motivated by pure political pragmatism and had little intention of upholding any unwritten rule (which itself is debatable), it is still apparent that the waves of political pressure that assailed the President were generated by outraged leaders and citizens who were attempting to uphold the principle that the United States had a duty to cease its unwanted and unilateral interference in the territory.

The case of Vieques shows that overt moves of central government interference in the local affairs of the territory, without the assent of the population and the government of Puerto Rico, are matched by norms of repugnance toward tyranny and political difficulties that can reach the offices of members of Congress and the president. Such deeply held principles and countervailing political influences are added to the precedents of noninterference and semi-legal judicial rulings that reinforce and defend Puerto Rico's post-1952 constitutional order.

Even those who dispute the doctrine of mutual assent as it applies to Puerto Rico are hard pressed to think of examples (apart from a few dismissible examples dealt with below) of when the territory's powers have been usurped by the central government since 1952. This is not an accident. The reason for this is that conventional rules are in operation to prevent such interference. This, however, may be countered by the objection that this record of noninterference is less a function of the central government's absence of power by conventional rules and more because it does not have any interest in interfering in the territory's affairs in the first place. In response, what then explains the central government's interference in Puerto Rican affairs before 1952? Furthermore, why does the central government readily intervene in other territories within the U.S. international legal space that are of less consequence to its interests, such as

[75] Robert Menedez, Extension of Remarks, U.S. House of Representatives, "On Military Operations in Vieques," 106th Cong., 16 July 1999.

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the U.S. Virgin Islands, Guam, or American Samoa (much less the numerous Indian territories), where the same informal agreements, precedents, and history are inapplicable? While it is beyond the scope of the present discussion to detail the experiences of these other territories at the hands of the central government, they are quite well catalogued by other scholars.[76]

If such conclusions are true, the United States has, in fact, surrendered some domestic sovereignty to a nationalistically distinct and territorially concentrated population that is not a state of the federal union. Similar to the British laws that were rendered inoperative by conventional rules with regard to the dominions, the territorial clause in the U.S. Constitution has been frozen with respect to the status of Puerto Rico with regard to issues that are not addressed by the U.S. Constitution. A binding informal constitutional rule entrenches Puerto Rico's post-1952 constitutional order, providing real powers of domestic sovereignty to the territory. Consequently, the most accurate description of Puerto Rico is neither as a mere colony nor as a decentralized territory. Puerto Rico is a polity with a range of sovereign powers that is unincorporated into the domestic system of the core state it is associated with. The relationship between Puerto Rico and the United States can therefore be described as a "federacy" arrangement.

As mentioned above, territorial supremacy theorists are hard pressed to think of noteworthy examples of Puerto Rico's powers having been usurped since 1952. There are nevertheless a number of cases that they manage to put forward to support their viewpoint. One such case was a 1985 U.S. federal court decision decreeing that prohibitions within the Puerto Rican constitution with regard to consensual wire tapping were inferior to provisions within a federal crime control act that permitted it.[77] In other words, Puerto Rico's constitution allowed wire tapping. The central government's laws, however, forbid it. In the end, a U.S. federal court decided in favor of the central government. While such a decision may seem to be an overt usurpation of the arrangement, it is nevertheless clear that the federal act would still apply to a state of the Union. Hence, just as a state of the Union retains its sovereignty even while being subject to such a federal act, so does Puerto Rico.[78]

Other issues that have been put forward as possible usurpations of the territory's domestic sovereignty are the actions that have been taken in the area of taxes and tariffs. A number of laws, including the 1976 Tax Act, the 1983 Caribbean Basin Initiative, the 1984 Tax Reform Act, and the 1986 Tax Act, have been put into effect by Congress without the consent of Puerto Rico (or its

[76] On interference by the central government as it pertains to the U.S. Virgin Islands, Guam, and American Samoa, see, especially, Leibowitz, *Defining Status*, 241–286, 318–374, 423–464. On interference by the central government within the Indian Territories, see Aleinikoff, *Semblances of Sovereignty*, 95–121.

[77] *United States v. Quinones* (1985) 758 F.2d 40 (1st Cir.).

[78] Similar arguments apply to Puerto Rico's prohibition of the death penalty, which the U.S. Federal First Circuit Court judged to be applicable to local courts applying local law within Puerto Rico but not to federal courts applying federal law. See *U.S. v. Acosta-Martinez* (2001), 252 F.3d (1st Cir.).

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complaint).[79] Equally, however, in 1978, Puerto Rico also radically changed its own tax system without the consent of the central government.[80] Many such actions on the part of both sides are perhaps due more to a mutual reluctance toward oversight over the great complexity of issues of taxes and tariffs, and a further interest in flexibility to make ad hoc adjustments, rather than to a desire to overtly usurp the arrangement. In one case, for instance, Puerto Rico was charged a $2.00 tax per gallon on its alcohol exports to the United States in Congress' 1984 Tax Reform Act. Unlike tariffs on other exports charged by the United States, which are deposited in the Puerto Rican treasury, this tariff on alcohol was not. The repatriation of tariff fees charged on Puerto Rican exports is what, in effect, provides for the U.S.–Puerto Rico customs union as per Section 58 of the Puerto Rican Federal Relations Act.[81] The failure to rebate Puerto Rico the $2.00 per gallon on such imports into the United States, however, seems to have been less one of unilateral profiteering by the central government and more one of a desire to develop ad hoc measures to mitigate the effects of the Puerto Rican government's efforts to artificially subsidize local alcohol production so that it could maximize the repatriation of tariff fees.[82] From such precedents, it may therefore be concluded that the area of taxes and tariffs may be somewhat exempt from the conventionally entrenching rules as long as unreasonably unilateral actions are not taken and a change of status is not intended.

Yet another issue that raises some questions is the fact that Puerto Rico is treated unequally in certain respects as compared to states of the federal union. Puerto Rico receives lower amounts of federal subsidies in certain areas than do states, in programs such as Supplemental Security Income; the National Assistance Program; Medicaid; elementary and secondary education; aid to families with dependent children; aid to the elderly, the blind, and the handicapped; and food stamps.[83] This unequal treatment has been confirmed by the courts.[84] Furthermore, Puerto Rico receives less federal aid per capita than any state in the union. The lowest amount of per capita aid given to any state is $4,939 and the average is $6,527. (The $3,644 of yearly per capita aid it does receive from the federal government is, however, still substantial.) Moreover, Puerto Ricans also cannot vote for the U.S. president while resident in Puerto Rico (although they can vote in the primaries that select the candidates for a presidential election and as U.S. citizens are free to vote when they reside on the mainland), nor does their congressional representative (the resident commis-

[79] Leibowitz, *Defining Status*, 175, 210.

[80] Ibid., 175.

[81] Ibid., 217. Polities joined by a customs union have a common external tariff but no internal tariffs between them.

[82] Ibid., 218.

[83] Ruth Lapidoth, *Autonomy: Flexible Solutions to Ethnic Conflicts* (Washington DC: United States Institute of Peace Press, 1997), 136.

[84] See *Califano v. Torres* (1978), 435 U.S. 1 and *Harris v. Rosario* (1980), 446 U.S. 651.

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sioner) have voting power in Congress (although the resident commissioner can introduce legislation and vote in committee).

Such treatment, however, seems to do little to undermine the integrity of Puerto Rico's status as a conventionally entrenched federacy. If anything, in some sense it clarifies it by underscoring the fact that it is not a state of the union with the same status and relationship with the federal government. Although it is treated unequally in terms of federal subsidies and federal voting power, it is also treated unequally, through the *benefits* its population receives—not having to pay taxes to the federal government or bear the costly financial burdens of defense. Indeed, there are still other beneficial inequalities (in the form of additional powers and privileges that the states of the Union do not have) that many in Puerto Rico would like to have but do not have at present. At several points since 1952, various "enhanced commonwealth" proposals have been put forward that would, for example, allow Puerto Rico to have some measure of control over immigration to the island. These proposals have also, for instance, suggested that Puerto Rico ought to be able to enter into international agreements with other states ("consistent with the laws and international obligations of the United States") and for Puerto Rico's powers (which, as argued here, are conventionally entrenched) to be formally entrenched.[85] This is certainly not inconceivable within the confines of federacy arrangements, since territories such as the Åland Islands (Finland) and Greenland (Denmark) have such powers. Nevertheless, while many in Puerto Rico do not approve of certain aspects of their arrangement, the existence of unequal treatment does not in itself constitute proof of usurpation of the arrangement. As long as Puerto Rico's existing final decision-making powers are credibly defended by the aforementioned informal agreements, semi-legal common law, and the political inertia of the ever-strengthening precedent of noninterference, the territory's conventionally entrenched status remains intact.

Conclusion

In sum, the Puerto Ricans have much of the same sense of nationalistic distinctiveness from the United States that areas in, for instance, the former Yugoslavia had as that state was breaking up in the mid 1990s. They have a different language. They have a distinct history. Their culture is dissimilar. They even have a historic tradition of violent revolutionary activity.[86] Indeed, even when the U.S. and Puerto Rican representatives were ironing out the territory's new constitutional order, attempts were made by Puerto Rican ultranationalists on the lives of U.S. President Truman, Puerto Rico's Governor Muñoz Marin, and members of the U.S. Congress. Thousands of National Guard soldiers were

[85] Aleinikoff, *Semblances of Sovereignty*, 87–92.

[86] For a description of political violence in Puerto Rico, see Monge, *Puerto Rico*, 93–94, 100, 113–114.

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called in to maintain order in several Puerto Rican cities. Significant numbers of policemen and civilians were killed and wounded in the ensuing turmoil.

At one time, Puerto Rico's most powerful parties and leaders favored independence. Today, however, at least 98 percent of the population wants some form of political association with the United States.[87] In an age of violent nationalism, it is certainly worth examining the reasons for this level of support. Arguably, much of the reason is the conventionally entrenched status that makes the territory a federacy. This status has provided important powers and domestic sovereignty without a politically sensitive formal entrenchment of the territory's powers. While there is certainly room to modify the existing arrangement, in the eyes of most of the population (which in recent years has been a narrow majority), this compromise has provided a better channel for their nationalistic identity than full independence or assimilation into the rest of the United States.

Nevertheless, the history of conventionally entrenched federacies also provides reasons for concern. While the federacy arrangements for the British dominions ultimately succeeded in extending the life of the British Empire's territorial integrity for many decades, it nevertheless failed to hold the Empire together. The reason for this is, in part, that dominion leaders and their populations grew frustrated with the vagary of conventional rules and their contradictions of dormant legal stipulations—in spite of their effectiveness at keeping the British central government at bay. Similar potentially destabilizing sentiments are also reflected in the leadership and population of Puerto Rico. But whereas a growing consensus developed in the dominions for greater movement toward independence, Puerto Rico suffers from a corrosive deadlock between the pro-statehood and pro-commonwealth parties, which engage in mutual political sabotage of each other's efforts to achieve their status preference.*

[87] On the results of the 1998 plebiscite in which less than 2 percent of voters chose independence, see Aleinikoff, *Semblances of Sovereignty*, 93.

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Book Reviews

Constructing the U.S. Rapprochement with China, 1961-1974: From "Red Menace" to "Tacit Ally" *by Evelyn Goh. New York, Cambridge University Press, 2005. 316 pp. $75.00.*

China and Vietnam: The Politics of Asymmetry *by Brantly Womack. New York, Cambridge University Press, 2006. 294 pp. $27.99.*

Sino-Japanese Relations: Interaction, Logic, and Transformation *by Ming Wan. Washington DC, Woodrow Wilson Center Press and Stanford, CA, Stanford University Press, 2006. 477 pp. $60.00.*

These three excellent new books offer empirical advances in the field of Chinese international relations. Each also contributes spiritedly, but with uneven success, to the debate on how international relations theory can best deal with subjects involving China.

Evelyn Goh provides new insight into a hitherto-overlooked period of U.S. policy making in regard to China, the 1960s. Although Presidents John F. Kennedy and Lyndon Johnson made no fundamental changes in China policy, Goh shows that new views of China were percolating in the White House, State Department, and intelligence agencies during this period, against the background of shifts in public opinion led by scholars and activists. All this prepared the way for the changes of the Nixon years. Goh takes advantage of newly available material from the National Archives and the Kennedy, Johnson, and Nixon presidential libraries to describe a lively and often far-sighted policy debate, which gradually refigured China from a "Red menace" to a "troubled modernizer" or "resurgent power" with whom Washington could do some limited business. Many of the ideas discussed then anticipated today's debates over ideas like engagement and hedging.

Goh also traces how Richard Nixon's thinking on China evolved during the same period. This adds depth to our understanding of how Nixon came to the decision for rapprochement after he became President. Her account enters more-familiar territory in a series of chapters that trace Henry Kissinger's and Nixon's re-envisioning of China once they were in office, as a realist power and eventually a "tacit ally." This story has been told by authors like James Mann and Patrick Tyler, although without Goh's attention to discourse analysis.

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Goh is convincing when she argues that her constructivist approach to policy making is essential to illuminating "how" policy changed. Yet this claim poses less of a challenge to realist theory than she seems to think, since realism does not argue for an instantaneous or automatic adjustment to changing strategic circumstances. Indeed, her narrative shows that changes in the American view of China were motivated by geostrategic realities like the Sino-Soviet split, China's acquisition of nuclear weapons, and the stalemated war in Vietnam. The "constructed" perception of China was a realistic one and changed quite agilely with changing realities, although not without some labor by those promoting new views. She is therefore less than persuasive when she claims that only constructivist analysis, not realist analysis, can explain how policy change is "possible" and why it takes place at the time that it does.

Brantly Womack offers a thematic history of China–Vietnam relations from the earliest times to the twenty-first century. The countries moved from being unequal empires, to allies, to enemies, to the current relationship of normalcy. But certain things never changed—the cultural ties and tensions between the two, the geographic proximity, with its attendant border problems, and rivalry over influence in the rest of Indochina. The most important continuity has been that Vietnam is at once a fairly large and powerful country (currently with a population of about 80 million) and the neighbor of a country that is much larger and more powerful. Womack synthesizes the secondary literature in Chinese and European languages, and has learned much from interviews in China and Vietnam. He insightfully characterizes the relationship as one in which the larger partner is never threatened but cannot dominate, while the smaller partner is permanently vulnerable but can never be subdued. For China, Vietnam is one of the most challenging of its many neighbors; for Vietnam, China is the gravitational core that Vietnam has defined its identity by resisting.

The three chapters that will be most useful to political scientists analyze shifts in the relationship from 1950 to the present, tracing China's aid to North Vietnam, the souring of the relationship in the context of the Sino-Soviet dispute, mutual hostility in the 1970s and 1980s, and normalized relations in the 1990s. Three preceding historical chapters help us see how the events of the last fifty years grew out of deeply established patterns rooted in the geopolitics of the relationship.

Less persuasive is the attempt to frame this history as a case study for a new "general theory of asymmetry" (p. xii) in international relations. This theory, as Womack develops it, does not come across as an alternative to realism, as he claims, but as an application of realism to this particular dyad and, presumably, to others that resemble it. (Some potential comparative case studies are alluded to but not developed.) Although neo-realism focuses attention on the relations among great powers and thus has relatively little to say about a regional power like Vietnam, classical realism argues more

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generally—just as Womack does—that any country's distinctive circumstances of geography and relative power shape its search for security. It is not a new discovery that most power relations in the international system are asymmetric. What Womack has to say about the generic nature of such relationships is often useful, sometimes obscure, but at no point a challenge to realism.

Like the other two authors, Ming Wan adds to our empirical knowledge, updating the literature on China–Japan relations, on which there has not been a major book in years, with the most complete, rounded, and thorough account in the English-language literature. He has done extensive research in Chinese, Japanese, and Western-language sources. This is the place to look if you want to know about the exchange of VIP visits between the two countries, security relations, trade and investment ties, relations around Japanese Official Development Assistance, people-to-people visits, each country's internal debates over relations with the other, mutual public attitudes, the Yasukuni Shrine controversy, and other topics. Given the importance of China and Japan as the two most powerful countries in Asia, with intense shared as well as conflicting interests, and given the importance of this relationship to the United States, and our poor understanding of how it works, this book makes a welcome contribution.

In the use of theory, Wan aims to be synthetic. He succeeds, keeping his eye on many different causes and factors—culture and emotions, perception, economics, national security concerns, and the American role. He argues that the Sino-Japanese relationship is both closer and more conflictual than before; it is complex, interactive, and affected by multiple factors and multiple causal processes. This "theoretical eclecticism" (p. 7) is faithful to the texture of the relationship. But as a trade-off, Wan cannot intercede persuasively in the debate over whether the conflicts between the two neighbors are fundamentally caused by culture and misperception or by hard interests. As a result, it is difficult to evaluate his prediction that the relationship of rivalry between the two will continue, evolving neither into friendship nor into enmity. Arguably, if problems are cultural, they can be overcome with intensifying interaction and good leadership, but if they are security-based, they will get worse absent a difficult-to-achieve strategic compromise and despite the American attempt to constrain such a trend. But Wan's analysis lacks a chapter on the structural geopolitics of the relationship that would help us evaluate whether any conceivable architecture could guarantee the mutual security of two such large, near, and in many ways evenly matched powers.

Taken together, the three books testify to the empirical deepening and theoretical ambition of the field of Chinese foreign policy studies, which is making progress as China's relations with the world grow more intense and complicated.

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Money and Free Speech: Campaign Finance Reform and the Courts *by Melvin I. Urofsky. Lawrence, University Press of Kansas, 2005. 323 pp. $29.95.*

Money, Power, & Elections: How Campaign Finance Reform Subverts American Democracy *by Rodney A. Smith. Baton Rouge, Louisiana State University Press, 2006. 192 pp. $29.95.*

Ever since the Progressive Era, Americans have attempted to balance regulating corrupt electoral practices with maintaining the civil liberties that many citizens believe to be fundamental to our nation. The enactment of the Bipartisan Campaign Finance Reform Act (BCRA) in 2002 brought this tension back to the forefront of the discussion about how Americans conduct elections. Melvin I. Urofsky and Rodney A. Smith examine campaign finance reform efforts in the United States and assert that—as well-intentioned to curtail corruption as they might be—they have come at the expense of the nation's founding principles. Smith further asserts that the reforms have insulated officeholders against real electoral challenge, an outcome he views as detrimental to fundamental democratic principles.

Historian Melvin Urofsky writes from the perspective of one who was once convinced that "preventing corruption in the campaign finance system just might qualify as the type of compelling governmental interest which courts have demanded in order for the government to regulate speech" (p. ix). He concludes, as did Justice Louis Brandeis, that "in a democracy the cure for allegedly bad is not regulation, but more speech" (p. 250). In making this journey, the author details the history of the efforts of reformers to limit the corruption many observers perceive to infect American politics. Urofsky illuminates the motivations and concerns of the players on all sides of the issue and traces the major themes—eliminating various forms of perceived corruption—over the last 100 years.

Understanding that American law is never "settled" until the courts and—in the case of the United States—the Supreme Court have weighed in on the constitutionality of laws passed by Congress, Urofsky identifies the central legal issue as "defining the type of political corruption that Congress could properly address" (p. 222) and provides an excellent recounting of the events and rulings in the two major campaign finance cases, *Buckley v. Valeo* (1976) and *McConnell v. FEC* (2003). While the details of the legal rulings may seem precise and overly detailed to the average reader, one is nonetheless able to follow well the twists and contortions through which jurists have put the law—as well as Americans' speech rights—in the last thirty years. Urofsky depicts quite accurately the trail of inconsistent rulings on the ability of the government to regulate speech in favor of regulating potential electoral corruption. The collective effect of these rulings has been to expand the authority of the Congress to regulate political speech in the name of checking rampant electoral corruption, even in the absence of extensive evidence verifying such a compelling government interest.

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The book's rich historical detail on both the legislative and judicial features of the campaign finance issue illuminates well the perspectives of all of the players. Although Urofsky professes a particular conclusion on the issue, his balanced approach provides readers the opportunity to draw their own conclusions. The author of the second book in this pair, however, makes few bones about where he stands on the issue of campaign finance reform.

Former fundraiser and staffer in President Richard M. Nixon's Committee to Re-Elect the President, Rodney A. Smith takes the baton and cogently asserts that the cumulative effect of campaign finance reform efforts has been to erode a fundamental American principle: citizen sovereignty. The book opens with what, for some, might be a chilling scene: a rush to get large sums of campaign cash deposited before the documentation requirements of the Federal Elections and Campaigns Act of 1971 became effective. This successfully sets the tone that government actions shape the ways in which people act as well as political outcomes. Specifically, Smith stresses that campaign finance reforms have had unintended yet predictable consequences for the health of the political system.

Unashamedly, Smith takes a hard line on the effects of campaign finance reform on civil liberties, reminds the reader of the fundamental principles upon which the Framers based the American system, and emphasizes that citizen sovereignty "lies at the heart of . . . representative government" (p. 19). Free speech ensures citizens' ability to hold government officials accountable and serves as the cornerstone upon which all other rights rest. Smith argues that reformers—in pursuing the elimination of the "perceived but unproven evil" (p. 97) of large donations of campaign money in the American electoral system—have placed those civil liberties in grave peril.

Smith's most provocative assertion, however, is that campaign finance reform has created a "new form of political Darwinism: survival of the richest" (p. 96) and that American democracy is in peril as a result. Employing extensive campaign finance data on congressional elections before and after the 1976 *Buckley* decision and after the enactment of BCRA in 2002, he demonstrates how both the power of incumbency and personal wealth have increased as a result of reform efforts. Challengers have quickly found that there is no longer adequate money to get their message out, and the advantage of incumbency has grown. Despite the efforts of reformers, incumbents are raising money and winning reelection at record rates, and the new rules have created loopholes through which the rich can fund political activity with few restrictions. Additionally, Smith contends that as presidential candidates have come under the public financing system created by reformers, they have focused their efforts on only those parts of the country where their resources will produce the most "bang," and thus one should not be surprised that presidential contests come down to only a few strategic places. While Smith concludes that the outlook for citizen sovereignty and democratic principles may be somewhat bleak in the short term, he remains optimistic that Americans

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will pursue "real reforms that will improve [the] system and further democracy" (p. 177).

For the student of campaign finance reform, these two works make an excellent match, albeit in support of one side of the issue. Both provide a comprehensive history of campaign finance reform efforts and make the case that those efforts have imperiled the foundations of the principles upon which the nation was founded.

J. MARK WRIGHTON
University of New Hampshire

Spying on the Bomb: American Nuclear Intelligence from Nazi Germany to Iran and North Korea *by Jeffrey T. Richelson. New York, W.W. Norton, 2006. 702 pp. $34.95.*

Because much of the information remains classified, no treatment of American nuclear intelligence can be definitive. But it is likely to be quite some time before anyone offers a more comprehensive, detailed, and fair-minded treatment than Jeffrey Richelson's. The strength of the book is in its meticulous research, drawn from both secondary sources and a wealth of documents, supplemented by interviews, and a coherent narrative that covers the nuclear programs of America's adversaries (and allies, since France and Taiwan are included) as well as what the United States knew about them. Many readers will want to look only at the chapters on countries that concern them, but mavens will want to read it through. Where the account falls short is in analysis and generalization. Richelson is not interested in stepping back from the rich stories to relate them to more-general arguments in social science or public policy.

His account reveals that while the recent intelligence failure on Iraq's nuclear program has its unique aspects, it is not a sharp break from the previous record. Judging others' nuclear programs is extremely difficult, especially when the country is a dictatorship. One might think that as technical intelligence systems have grown in sophistication, the problem would be easier. Perhaps it is, but it is still very difficult. Overhead photography reveals a great deal, but not what is under roofs; communication intelligence can yield some strong evidence, but few messages can be intercepted; human intelligence remains invaluable, but it is often excruciatingly difficult to separate good information from fabrications. Richelson's account shows that the United States has done best when all three kinds of information are available and each can be used to corroborate and supplement the other. As long as any one is missing, intelligence is likely to be incomplete or wrong, often very much so.

American attempts to probe the Nazi nuclear program encountered several difficulties that would recur. We did not want to tell potential sources and even analysts too much about what we were looking for lest the security of the Anglo-American program be compromised. An additional difficulty that appeared in other World War II intelligence was that to say too much about

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what you were looking for was likely to produce confirming reports from sources that wanted to be helpful, a problem that arose in the Iraqi case. Tracking individual scientists proved useful during World War II, and was also valuable later, but it was also difficult. In this and later cases, Richelson shows how important it was to keep track of all sorts of details, many of which at first seemed irrelevant (and which often came from unclassified or open sources) and yielded significance only when they were all combined. Meticulous record keeping and tedious research lacks the glamour often associated with intelligence, but pays off.

So does luck. Richelson confirms other accounts in stressing how many of the most valuable human sources were "walk-ins," that is, people who literally walked into an American facility and volunteered their services. Of course, it was a challenge to separate the sincere from those who were sent by the enemy or who were just deranged. Every intelligence service has made errors in both directions, but it is striking that for all the attempts to lure people into becoming agents, volunteers have probably been of greater value.

The judgments about what others were doing were difficult, and the U.S. government often was split. Not surprisingly, the Defense Department's intelligence arm usually produced very high estimates, the State Department's usually implied there was room for negotiations, and the CIA's varied, although it was not always the most accurate.

Along the way, the reader learns some good stories and nice tidbits. The sensor that the United States dropped to gain data on Chinese nuclear tests was designated Tobasco, the flash detectors on the Vela satellites that detected nuclear explosions were called bhangmeters, and, more substantively, in April 1961, the French detonated a nuclear device before it was ready in order to ensure that the nuclear material did not fall into the hands of the rebelling generals in Algeria.

ROBERT JERVIS
Columbia University

The Silent Majority: Suburban Politics in the Sunbelt South *by Matthew D. Lassiter. Princeton, NJ, Princeton University Press, 2005. 376 pp. $35.00.*

In his book's dense, intricate introduction, Matthew Lassiter presents multiple provocative arguments about race, class, and politics in the South of the 1960s and 1970s. His bold revisions are based on an examination of metropolitan politics at the neighborhood level. He challenges the "southern strategy" as a top-down Republican exploitation of a white southern reaction to the civil rights movement, and he rejects the "artificial distinction" between de facto and de jure segregation. He also criticizes "race-reductionist narratives" that neglect class, and he introduces urban geographical or spatial relationships to the study of race (p. 4).

Lassiter provides close analyses of metropolitan politics in Atlanta and Charlotte during brief periods of controversy. Before addressing the two

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communities, however, he proposes that southern middle-class metropolitan moderates saved public education from massive resistance by "replacing the civil rights agenda of social justice with an ostensibly race-neutral discourse of regional progress and individual meritocracy" (p. 30). The moderate agenda had particular power in suburban Atlanta, where a grassroots movement advocating keeping the public schools open contested Georgia's Black Belt for control of educational policy. Annexation of growing, prosperous white suburbs allowed the city to develop "racial stability through racial apartheid" that left blacks in the segregated downtown area (p. 52). In 1966, when the northside suburbs refused further annexation, Atlanta's bi-racial politics, which had stressed "peace and progress, never justice or equality," finally collapsed and attempts at desegregation failed (pp. 115–116).

In a longer section on Charlotte, Lassiter describes a model that produced a remarkably integrated urban public school system. A "suburban ideology of racial innocence" encouraged white suburbanites to oppose busing as a violation of their deserved rewards for success; with a "color-blind" approach, they "pioneered the grassroots explosion of the Silent Majority" (p. 148). When federal courts ordered busing in the early 1970s, however, populism in Charlotte's blue-collar suburbs challenged the political dominance of white suburban elites and demanded class and geographic equity in desegregation. Because automatic annexation and consolidated city-county schools allowed a metropolitan solution that included spatial, economic, and racial integration, Charlotte provided an exceptional example of successful integration.

The book's third section declares that the "silent majority" started in southern suburban politics that stressed "a color-blind defense of the consumer rights and residential privileges of middle-class white families" (p. 227). In 1968, Richard Nixon pursued a national suburban strategy, not a southern strategy based on race. When Republicans followed Kevin Phillips's southern strategy in the early 1970s, they lost, but their blurring of de facto and de jure segregation reflected a "regional convergence" and a national suburban consensus (p. 301). Successful desegregation of schools and suburbs, which depended on "the structural elasticity of the spatial landscape and the metropolitan scope of the desegregation remedy," failed because the federal government rejected metropolitan solutions (p. 300). As a result, "state-sponsored residential segregation" in the North and South became "a historical wrong without a constitutional antidote" (p. 315). As suburbanization led to a convergence of the South and the rest of the country, southern and northern conservatives, Lassiter concludes, rallied to a class-based ideology that avoided both racism and civil rights reform.

Lassiter's revisionism will provoke debate. His denigration of the de facto–de jure distinction, his de-emphasis of race in favor of class and space, his disparagement of southern distinctiveness, and his dismissal of Phillips's southern strategy will prove controversial. Lassiter's arguments might be more persuasive if they derived from wider research; limited largely to Atlanta and

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Charlotte, his study neglects other southern cities and the nonmetropolitan South. By focusing on school desegregation, it also may miss the impact of other issues and forces, both racial and non-racial, on political change in the South. Further work will have to test his theses.

CHARLES W. EAGLES
University of Mississippi

Party Wars: Polarization and the Politics of National Policy Making *by Barbara Sinclair. Norman, University of Oklahoma Press, 2006. 424 pp. Cloth, $34.95; paper, $19.95.*

Few topics in American politics are as timely and pertinent as the origins and implications of rising polarization and partisanship in U.S. politics. Barbara Sinclair's *Party Wars* is a useful and accessible contribution to that discussion.

In her introductory chapter, Sinclair outlines changes in the standard quantitative metrics of polarization: increased levels of party voting in Congress, greater party divergence in NOMINATE (NOMINal Three Step Estimation) and other measures of legislator policy positions, and more-distinctive preferences of partisan activists and identifiers. She concedes to Morris Fiorina and others that the electorate as a whole is not polarized, but she argues that polarized preferences extend far enough into each party's rank and file that elite polarization has a strong constituency basis.

She then devotes three chapters to the historical development of the conservative movement in the Republican Party, the operation of the House under the Democratic majority, and its operation under the Republican majority since 1994. Not a lot of new ground is broken; the chapters generally reflect the consensus narratives developed by political scientists and historians in recent years. Nevertheless, these summaries help set the stage for the central contribution of her book: the effects of polarization on the American policy process. By emphasizing the origins of legislative polarization in the electoral connection and pointing out the limits of party leadership in the Senate, she distances herself from the claim that strong, centralized party leadership is responsible for increased legislative polarization. Nevertheless, she clearly documents the ways in which presidents and party leaders have responded to the incentives created by this new environment by pursuing more-partisan strategies in an attempt to shut the minority party out of the policy-making process. She makes a clear case that polarization helped re-write the "textbook" Congress.

I do have a few quibbles with aspects of her analysis. First, the validity of some of her claims is not always obvious. For example, Sinclair asserts that "the president now faces organized competition for agenda control that was not the case in the past" (p. 262). Clearly, she has in mind programs like the Republicans' "Contract with America" and the Democrats' "Families First." But presidents have never completely dominated the congressional agenda.

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Only a small part of Congress' workload is ever administration proposals, and even less is part of the president's program. Whether "organized competition" with the president over the agenda has made a significant difference in legislative outcomes is not at all obvious.

Second, although Sinclair is very evenhanded (perhaps too evenhanded) in apportioning blame for polarization between the right and left, her discussion of the media is an unfortunate exception. Relying excessively on polemics by Eric Alterman and David Brock and paying little attention to political science research on the topic, she too quickly concludes that there are no liberal or partisan biases within the mainstream media and that the emergence of conservative media represents the only polarizing trend within journalism.

As political scientists are prone to do, Sinclair ends on a prescriptive note. But her proposals for reform seem overly cautious. After persuasively arguing that polarization and partisanship are phenomena whose origins and extent stretch well beyond the halls of Congress, most of her proposals focus on rather narrow technical reforms of the legislative process, such as increasing the ability of minority partisans to offer amendments. But at least she is realistic enough to concede that polarization will not succumb to easy institutional fixes.

These shortcomings, however, do little to detract from what is certain to be an important contribution to our understanding of contemporary American politics.

NOLAN MCCARTY
Princeton University

The Election After Reform: Money, Politics, and the Bipartisan Campaign Reform Act *by Michael Malbin, ed. Lanham, MD, Rowman & Littlefield, 2006. 304 pp. Cloth, $70.00; paper, $29.95.*

It has been commonly remarked, often critically, that money is the mother's milk of politics. Electoral politics, in particular, and campaign finance are inextricably linked. The role of money in elections has attracted the assiduous attention of scholars, activists, reformers, and citizens alike, and U.S. history is punctuated with episodes of heightened emphasis on campaign finance issues. In 2002, Congress passed the Bipartisan Campaign Reform Act (BCRA), largely in response to pressure to purge the campaign finance system of elements viewed as corruptive, potentially corruptive, or otherwise compromising to the democratic process. BCRA overhauled key features of the campaign finance system, raising individual contribution limits, eliminating soft money, and regulating electioneering communications and other forms of federal election activity. During the intense debates over the array of measures proposed by BCRA, analysts often clashed over its anticipated effects. Critics' claims that BCRA would undermine political parties and free speech, reduce competition, and strengthen interest groups were disputed by experts who argued that the law would have no such deleterious effects. Ultimately, passage of the

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controversial reform package immediately led to court challenges on constitutional grounds. Regulations adopted by the Federal Election Commission (FEC) to implement the law were similarly challenged. In a landmark decision, the U.S. Supreme Court upheld most of BCRA's provisions in December 2003.

The first presidential election cycle to occur after the passage of BCRA, 2004, was a watershed year. Even as controversy over BCRA endures, an examination of campaign finance evidence from 2004 permits analysts to assess anew—empirically and dispassionately—claims advanced during debates over the law. Readers interested in the most up-to-date appraisals of the impact of BCRA, or, more generally, about the role of money in the 2004 presidential election, should start by reading Michael Malbin's *The Election After Reform*. In the volume, Malbin, one of the nation's preeminent campaign finance researchers and executive director of the Campaign Finance Institute, assembles original analyses and reflections from leading scholars and experts about the impact of BCRA. Contributors address how political parties are adapting to the new regulatory environment of campaign finance, the impact of the elimination of soft money in federal elections, and the changing role of interest groups and advocacy organizations in contemporary campaigns. The volume also includes studies of the effects of specific BCRA provisions about television advertising and the so-called millionaires' amendment, as well as chapters on grassroots activities in 2004 and the public funding system for presidential campaigns. Each selection uses claims about specific components of BCRA as a launching pad from which to explore more broadly key themes related to campaign finance regulation.

Without exception, the analyses are thoughtful, accessible, and empirically rich, placing 2004 within the context of previous scholarly research on campaign finance. The evidence shows, among other things, that parties have not collapsed under BCRA. Authors including Anthony Corrado, Diana Dwyre, Robin Kolodny, and Raymond La Raja demonstrate that both national and state parties are adapting to BCRA, even thriving under the new law. Stephen Weissman and Ruth Hassan report on the activities of 527 groups in 2004. Robert Boatright and his coauthors investigate the financial activities of ongoing interest groups and advocacy organizations and show that these groups attracted much of—although not all of—the soft money that was prohibited by BCRA. Michael Franz and his colleagues find that BCRA failed to affect the amount or content of broadcast advertising in 2004. Nearly twice as many ads were aired in 2004, compared to 2000, and the authors observe little change in the tone of advertising despite BCRA's "stand-by-your-ad" provision that aimed to curtail negativity. David Magleby and Kelly Patterson find that BCRA did not thwart grassroots activity in 2004. In fact, the authors observe a renewed emphasis on grassroots mobilization. In the final section of the book, Gary Jacobson, a national expert on congressional elections, evaluates the impact of BCRA on these races. Jacobson attributes few substantive effects to BCRA,

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arguing that despite the doubling of individual contribution limits, reforms more fundamental than those imposed by BCRA would be necessary to increase competition and to alter the lopsided distribution of campaign resources. The two concluding chapters, by Jennifer Steen and Michael Malbin, respectively, offer fresh perspectives and practical guidance about the "millionaires' amendment" and presidential campaign financing. In the final chapter, Malbin warns that the current system of public matching funds for presidential contenders is obsolete and becoming largely irrelevant and calls for further reform. Also worth noting is the value of the informative appendices prepared by the Campaign Finance Institute. These present summaries of BCRA, the U.S. Supreme Court decision in *McConnell v. Federal Election Commission*, and the regulations adopted by the FEC in 2002 and 2003 to implement BCRA.

Collectively, the evaluations presented by the authors reveal the complexities of the campaign finance reforms enacted by BCRA and underscore the need to monitor developments and to remain vigilant about how the electoral system is adapting to the recent reforms. The selections help to dispel many myths about the impact of BCRA and pose new and intriguing questions in the aftermath of reform. After all, the campaign finance system is dynamic and evolving. *The Election After Reform* may not be the final word on the topic, but the volume provides the most judicious and comprehensive treatment of contemporary campaign finance available. Readers will be hard-pressed to find a better collection of scholarly insights into modern campaign finance.

COSTAS PANAGOPOULOS
Fordham University

Deliberative Choices: Debating Public Policy in Congress *by Gary Mucciaroni and Paul J. Quirk. Chicago, IL, University of Chicago Press, 2006. 296 pp. Cloth, $50.00; paper, $20.00.*

Gary Mucciaroni and Paul J. Quirk provide a thoughtful and careful analysis of congressional floor debates in an effort to provide more insight into congressional deliberations. The authors acknowledge the complexity of deliberation and the many dimensions by which it can be evaluated (such as inclusiveness, responsiveness to citizens, and range of viewpoints considered) but choose to focus their research "on the single dimension of intelligence" (p. 5). In other words, when debating legislation, do legislators provide a reasonable and accurate picture of the policy's potential consequences?

The central objective of the book is to explore "why congressional debate is sometimes highly informed and realistic, while at other times [it] is impoverished or misleading" (p. 10). What factors cause legislators to sometimes provide accurate information and at other times to distort the facts? Mucciaroni and Quirk argue that representatives make strategic decisions about what claims and arguments to enter into debate. Members must balance a trade-off between the *force* of an argument (its appeal and power to persuade) and its

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credibility (its accuracy). The authors argue that certain conditions will lead members to emphasize force over credibility, and in other instances, members will need to emphasize credibility over force.

To investigate this theory about congressional deliberation, the authors analyze floor debates in both the House and the Senate on three policy areas—welfare reform, repeal of the estate tax, and telecommunications deregulations. Mucciaroni and Quirk develop a systematic, transparent, and fairly objective method for analyzing debate (see chapter 2). The authors identify the effect issues in each debate, describe relevant expert opinion and information available to members of Congress on these issues, and then assess whether the claims offered by legislators are consistent with the available facts and information or if the arguments are inaccurate or misleading (p. 46).

Overall, the authors find that legislative debates contain a significant amount of misleading and inaccurate information, but that this is somewhat balanced by informed rebuttals from the other side. The majority of debates, 59 percent, on effect issues, can be described as *fair* or *poor*, while only 25 percent were found to be *good* or *very good*. Despite the overall poor assessment of congressional deliberations, Mucciaroni and Quirk describe several factors that are likely to produce more-informed debate. They find that debate is more informed when there is bipartisan support for the claim and also when more time is allotted for deliberation. Not surprisingly, they find that Senate debates tend to be more informed than those in the House. They also find that debate will be more informed when interests groups are mobilized on both sides of an issue. In the last chapter, the authors offer ways in which these findings can be used to improve congressional deliberation.

There are several limitations to the book. First, the analysis is limited to floor debates. While the authors acknowledge that most thorough deliberations occur in committees, they focus their analysis on floor debates. An analysis of deliberation within committee hearings and meetings, where members are not constrained by time and floor rules, might reveal quite a different picture of the quality of deliberation that occurs in Congress. Second, the complexity of their model (number of variables considered) and the limited number of observations make it difficult for the authors to draw strong empirical findings. Finally, the nuanced nature of the analysis forces the authors to sacrifice some parsimony. Given the complex nature of deliberation, some readers may not find this problematic at all, but it does make it difficult to draw clear predictive hypotheses for future research or to provide strong recommendations on how to improve congressional deliberation. For example, the authors argue that both bipartisanship and party conflict lead to more-informed debate. In an environment of extreme partisan conflict, legislators are more likely to make extreme claims, but opponents are also more likely to rebut inaccurate claims. If one is attempting to improve congressional debate, should one press for more-bipartisan coalitions or partisan conflict? Despite these limitations, Mucciaroni and Quirk provide students of congressional

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deliberation with new insight into how information is used in congressional policy debates and an original and systematic methodology for analyzing congressional debate.

KATRINA L. GAMBLE
Brown University

Ten Thousand Democracies: Politics and Public Opinion in America's School Districts *by Michael B. Berkman and Eric Plutzer. Washington DC, Georgetown University Press, 2005. 206 pp. $26.95.*

Is direct democracy an ideal or a reality in the American polity? How does the public view the role of local governments? To what extent do local governments respond to citizens' policy preferences? Are well-organized interest groups privileged in shaping local public spending? And how would we know the public pulse on crucial local policy issues? Questions such as these are central to local democratic practices. On one hand, there are growing concerns about the health of the local polity as studies show declining trends in voter turnouts, civic participation, and citizens' knowledge of government. On the other hand, local governments are expected to continue to deliver core services. Given the potential tension between preferences and policy, a key question is whether local governmental decisions are shaped by the collective preferences of the local citizenry.

Ten Thousand Democracies offers a timely contribution to our understanding of these issues in our local democracy. In this well-researched, engaging book, Michael Berkman and Eric Plutzer, two political scientists at Pennsylvania State University, present an innovative study on fiscal policy responsiveness in public school districts, a sector of traditionally strong local control that is commonly characterized by popular sovereignty. More specifically, the authors examine whether public opinion, governing arrangements, and interest group politics contribute to spending decisions among districts with comparable characteristics. While the substantive logic of this research question may sound straightforward, the empirical task is enormous. To begin with, there is a dearth of opinion surveys conducted across school districts. The alternative of administering a nationwide survey in each of the roughly 10,000 school districts could be prohibitively costly.

Clearly, the first analytical challenge is to estimate public opinion in the absence of survey data at the school district level. To meet this challenge, the authors creatively developed a statistical technique, known as small polity inference, which carefully builds on three methods, including the simulation approach, the aggregation method, and the Bayesian hierarchical models with poststratification. In essence, the small polity inference approach draws on the opinions on school spending as expressed by individuals across various citizen types (as characterized by various demographic and spatial characteristics) in the forty-four-state General Social Survey during 1985 and 1994. To estimate

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the balance of citizens' opinions on school spending at the district level, the study assigns appropriate weights to various distinct citizen types based on detailed calculation from the census' school district "special tabulation." Students of public opinion will find the technical discussion in Appendix A particularly informative.

The second analytical task is to examine the institutional conditions under which public opinions are shaped by electoral and other governing arrangements at the school district level. Some of the substantive findings come as no surprise to students of local and school politics. Citizens are generally supportive of educational spending. Ward-based elections tend to facilitate greater black representation on school boards. Teachers' unions at the state and district levels exercise influence on district spending increases.

More importantly, several findings challenge our conventional understanding of how the democratic process works in education spending. Let me cite three examples. Contrary to the expectation that an independently elected school board is more responsive to local citizens, Berkman and Plutzer found that school funding decisions are "most responsive to public opinion" when these decisions are made by "the more professional politicians of the city or county government, and those in which more professional politicians appoint school board members" (pp. 156–157).This observation is consistent with my research on mayoral-appointed school boards in large urban districts. Further, the book challenges the "gray peril" perspective by differentiating senior citizens who recently relocated to a community from their peers who may have developed a sense of loyalty due to longer-term residence. Third, this study raises the question of unions' privileged position in interest group politics. While unions exercised substantial influence, they did not undermine district responsiveness to local citizens.

While the book offers cogent findings on public opinion and school spending, it does not provide much substantive detail on how citizens form their views on public schools and district spending in the context of heightened accountability. Aside from their secondary analysis on how local governing entities operate, such as that of the works of Bryan and Mansbridge on New England town hall meetings (Frank Bryan, *Real Democracy: The New England Town Meeting and How It Works*, Chicago, IL: University of Chicago Press, 2004; Jane Mansbridge, *Beyond Adversary Democracy*, New York: Basic Books, 1980), the authors did not gather original information on how decisions are made in different governance systems. Given the complex pathways of school funding decisions, case study materials would have been particularly illuminating. Building on the book's seemingly provocative findings that town hall meetings did not result in greater policy responsiveness, future research may further explore various mediating conditions, such as the amount of information available to all citizens in advance, citizen turnout for meetings when school budget and taxing decisions are made, and the role of professional experts (such as the school superintendent and principal).

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From the perspective of fiscal federalism, local districts seldom allocate their tax revenues for redistributive purposes. This policy tendency was featured prominently in the scholarly debate following the publication of Paul Peterson's *City Limits* (Chicago, IL: University of Chicago Press, 1981). Even though *Ten Thousand Democracies* deals with local fiscal policy, the authors missed the opportunity to engage in this debate. The study could have been extended to examine the politics of redistributive spending preferences and policy responsiveness across the 10,000 districts. If Peterson's theory is correct, then districts with greater fiscal capacity are more likely to respond to redistributive demands. In short, this book provides an excellent empirical foundation for further inquiry on democratic politics and educational policy.

KENNETH K. WONG
Brown University

The Reagan Imprint: Ideas in American Foreign Policy from the Collapse of Communism to the War on Terror *by John Arquilla. Chicago, IL, Ivan R. Dee, Publisher, 2006. 288 pp. $26.00.*

In the aftermath of momentous historical events, a debate over who deserves credit or blame often rages for decades among statesmen, scholars, and the public alike. How and why the Cold War ended is one of the most hotly contested historical questions in recent memory. In his valuable contribution to this debate, John Arquilla posits that President Ronald Reagan's unique leadership traits and "idea-driven" (p. xii) foreign policy were the pivotal factors in bringing an end to the Soviet–American standoff. Additionally, he argues that Reagan's legacy, or "imprint," offers important insights into Reagan's notoriously elusive personality, as well as potential strategies that the United States should pursue to better meet the current challenge of global terrorism. The goals of this informative and readable book are certainly set very high. For the most part, Arquilla does not disappoint, though his arguments often prove far more persuasive regarding issues of less controversy and significance.

A central purpose of the book is to inform a better understanding of American diplomacy during the Cold War era, especially toward its end. Arquilla achieves this objective by providing a sound overview of the arguments, debates, and crises that shaped the forty-five-year conflict. He aptly outlines the manner in which U.S. strategy regarding the Soviet Union gradually evolved over time, moving from a policy of containment, inspired by George Kennan, to the innovative "rollback" policy spearheaded by Reagan.

By examining the evolution of Reagan's strategy toward the Soviets over two terms in office, Arquilla also generally succeeds in achieving a second objective of the book: to offer new insights into Reagan's personality traits as both a man and a political leader. Early on as President, Reagan was rightly considered hawkish toward the Soviet Union, and was often dismissed as a thinker without nuance. Not long after he took office, however,

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it became clear that he would prove to be a surprise as President. Arquilla shows how this "unexpected" Reagan turned out to be a deft strategic thinker, willing to consider a variety of perspectives and to question conventional thinking on a number of the most pressing issues of the day. By outlining Reagan's flexibility and adaptability on issues ranging from the rehabilitation of the U.S. military, to arms control and disarmament, Arquilla effectively brings to life some of Reagan's less-acknowledged personality and decision-making traits.

However, the focus on Reagan as a strategic thinker also exposes the book's principle shortcoming. Although Reagan may have thought big, Arquilla provides little evidence to suggest (let alone prove) that such thinking was primarily the reason that the Cold War ended how and when it did. He gives short shrift to a variety of other major contributors to the fall of the Soviet Union—bureaucratic malaise, economic decline, military overextension—as well as the influence of other important personalities like Mikhail Gorbachev, Pope John Paul II, Margaret Thatcher, Lech Walesa, and Vaclav Havel, and so the factors contributing to the end of the Cold War remain greatly over-determined.

In addition, it remains unclear how Reagan's penchant for putting ideas into practice could help us out of our current global conundrum. On the one hand, we see how runaway ideas—like those of the neoconservatives in the first administration of President George W. Bush—can entangle the nation in far-away lands, leaving us in search of a way out. And on the other hand, it was Reagan's innovative idea of assisting "freedom fighters" around the world, including Osama bin Laden's *mujahadeen* in Afghanistan, that not only helped win the Cold War but also set the stage for the complex global conflict in which we are currently engaged. Sometimes even the best of ideas can come back to haunt you.

STUART GOTTLIEB
Yale University

The Shield and the Cloak: The Security of the Commons *by Gary Hart. New York, Oxford University Press, 2006. 208 pp. $22.00.*

The central argument of this book is that the United States is facing a fundamentally new strategic situation that has no parallels in the past. The end of the Cold War and, in particular, the attacks of September 11 have ushered in a new era that demands a new understanding of the threats and actors, as well as a fresh assessment of the strategies to adopt. Past strategies, focused on the military aspects of security, are not only of dubious utility but also can be seriously counterproductive. In brief, the United States needs a shield—military forces capable of projecting power to distant regions to protect American interests—and also a cloak, a combination of international cooperation and effective domestic policies to guard the "global commons" from non-military threats.

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The premise of the book, and its *leitmotif*, is that traditional concepts of security are outmoded. Security, as Gary Hart writes, is not just military, but encompasses several areas of life: "security of livelihood, security of the community, security of the environment, security of energy supplies, and security from terrorist or other attacks" (p. 17). Given such a broad definition of security, U.S. foreign policy cannot focus exclusively on military threats (such as terrorist organizations or rogue states) and needs to deal with several issues, ranging from health problems to pollution and access to education.

There are two sets of specific proposals. First, and perhaps most interestingly, Hart details how U.S. military forces need to adapt to the new security environment. Specifically, he argues that the National Guard should focus on its original objective, the defense of the U.S. homeland. Moreover, because the principal military threat to the United States is likely to continue to be nonstate actors such as al Qaeda, the United States needs to emphasize the training of Special Forces rather than heavy armor divisions or top-of-the-line fighter jets.

The second set of proposals, dealing with the broader nature of security, is less specific and tends to slip into elusive calls for more international cooperation. Such an argument is not new, especially in light of the ostensibly unilateral policies of the current Bush administration and, in this book, tends to be frustratingly vague.

This is also where the shortcomings of this book become clear. First, while the book is wide-ranging and demonstrates the author's deep technical and policy knowledge, it is also unfocused and unclear. An expansive definition of security leads to an expansive concept of foreign policy, with the result that it is very unclear what the United States should do in specific cases such as Iran or North Korea. Also, the ultimate objective of such a foreign policy (as Hart writes, security is achieved "when every child in America is secure" [p. 180]) is so generic that it is impossible to discern clear steps for reaching it. The specific plans of military reforms mentioned earlier are at odds with the nebulous strategies proposed to deal with the "commons."

Second, the book often reads as if it were written by a politician running for election. Its objective seems to be to formulate a foreign policy platform for the Democratic Party, and many of its points are written as a direct response to the Bush doctrine and the war in Iraq. Consequently, many paragraphs are closer to a stump speech, rather than a product of careful and scholarly analysis. Moreover, particularly when dealing with the assessment of U.S. military forces and recommendations for their improvement, Hart tends to focus more on his personal achievements in reforming the U.S. national security apparatus rather than on a dispassionate examination of what has been done and what still needs to be done.

JAKUB GRYGIEL
The Johns Hopkins University

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The Enemy of My Enemy: The Alarming Convergence of Militant Islam and the Extreme Right *by George Michael. Lawrence, University Press of Kansas, 2006. 397 pp. $34.95.*

George Michael's *The Enemy of My Enemy* explores the connections and possibilities for cooperation between a threat of substantial contemporary interest to policymakers, intelligence analysts, and political scientists—militant Islamic movements like the al Qaeda organization (AQO)—and one that is, in many respects, an incipient one, Western right-wing extremism. The book provides a good overview of the historical and intellectual wellsprings of these two movements, but ultimately does not provide a case that would justify alarm.

The author's argument can be deconstructed into three parts. In the first, he introduces the reader to right-wing extremist and militant Islamist groups, leaders, ideological tenets, and history, focusing on the U.S. extreme right in chapter 2, militant Islamist groups in chapter 3, and the history of Islamic extremism in the United States in chapter 4. In the second part, the author presents his case regarding a recent "convergence": chapter 5 describes past efforts by right-wing extremists in the United States and Europe to forge cooperative relationships with Islamist militants, while chapters 6 and 9 present each community's views regarding the possibilities for cooperation, and chapter 10 assesses overall prospects for such cooperation. Finally, the author describes efforts to combat right-wing extremism and militant Islam by the U.S. government (chapter 6) and nongovernmental organizations (NGOs) such as the Anti-Defamation League and the Southern Poverty Law Center (chapter 7).

Based on the evidence Michael presents, many readers are likely to conclude that there recently has been only modest "convergence" between the extreme right and militant Islam; that any convergence has at best been ideational (but more likely rhetorical only), reflecting long-standing agreement on traditional foes (for example, Jews) or emerging ones (for example, globalization, the "New World Order") but offering a questionable basis for meaningful collaboration; and that efforts by the U.S. government and NGOs further dampen the prospects for cooperation.

The book does not convincingly demonstrate that right-wing extremists in the United States are even particularly desirable partners for militant Islamists, compared to others also abiding in the non-Muslim *dar al-Harb* ("house of war"). Many of the right-wing leaders the author cites appear to view most (that is, Arab and other non-white) Muslims with only slightly less contempt than Jews, Israelis, and Zionists. More importantly perhaps, although some denizens of the extreme right have offered occasional words of praise for militant Islamists—and even more frequent expressions of envy for their commitment, discipline, and organization—their efforts to effect more durable partnerships have not only been modest and fleeting, but also generally have been ignored or rebuffed by the militant Islamists they hoped to cultivate. Indeed, the author never really makes clear why AQO would even bother to look beyond Muslims in the West—Muslim prison gangs in the United States (so-

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called "prislams"), for example, or anomic European Muslims—to partner with the mercurial right. (The potential for cooperation between Muslim prison gangs and international terrorist organizations is described in National Alliance of Gang Investigators Associations, *2005 National Gang Threat Assessment*, Washington DC: Bureau of Justice Assistance, pp. vi and 5–6, accessed at www.ojp.usdoj.gov/BJA/what/2005_threat_assesment.pdf, January 2007; C. Christine Fair and Husain Haqqani, "Think Again: Islamist Terrorism," *Foreign Policy* online edition, January 2006, accessed at http://www.foreignpolicy.com/story/cms.php?story_id=3359, January 2007; and Jeremiah Marquez, "Officials Checking Whether Alleged LA Plot Linked to Prison Gang," Associated Press, 18 August 2005, last accessed via Lexis-Nexis, January 2007.)

In the final analysis, although *The Enemy of My Enemy* offers good reasons for continued monitoring of efforts to forge an alliance, it does not provide particularly compelling evidence of the recent "alarming convergence of militant Islam and the extreme right" that one might expect from its subtitle. Militant Islamist movements like AQO seem to be primarily animated by their own objectives and worldview, view non-Muslims as *kafir* (unbelievers and infidels, or worse) and, despite the occasional flirtations of right-wing extremists, have far more attractive prospects to court in the West.

ERIC LARSON
RAND

Why War? The Cultural Logic of Iraq, the Gulf War, and Suez *by Philip Smith. Chicago, IL, University of Chicago Press, 2005. 264 pp. $35.00.*

Why do certain story lines and themes recur in the public debates about a wide variety of different wars and international crises? For Philip Smith, the literary tropes and genre moves found in public discourse hold the key to understanding the causes of war. "War is not just about culture," he argues, "but it is all about culture" (p. 4). Deploying literary theory to decode the public debates in four countries about three wars (the 1956 Suez Crisis and the two American wars with Iraq), Smith delivers an entertaining and original but ultimately frustrating book.

Smith maintains that "the codes defining the sacred and the profane in social life and a limited pool of narrative structures within a civil discourse form the cultural bedrock upon which military policy is made legitimate and thinkable" (p. 3). He identifies a "Discourse of Liberty" and a "Discourse of Repression"; the appearance of the latter is "a minimal requirement for war" (p. 17). Several narrative genres recur, with predictable political consequences: low mimesis, characterized by threat deflation; tragedy, evoking grand emotions in a futile struggle against fate; romance, featuring the triumph of the hero; and the apocalyptic, featuring intense character polarization and the highest of stakes. Invocations of the apocalyptic are used to mobilize support

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for war, against the low mimetic attempt to deflate the threat and restore normal politics.

Smith expertly reconstructs these "genre wars," demonstrating how the theoretical apparatus he brings to bear can provide new insights into familiar historical debates. He skillfully conveys the shifts in the characterization of Nasser during the Suez crisis, and the struggles in 1990–91 over how to characterize the Iraqi invasion of Kuwait—with the apocalyptic doing battle with the low mimetic, and the Discourse of Liberty bestowed on such unlikely referents as Kuwait and Saudi Arabia.

The descriptive analysis has its limits. Smith confines his attention to op-eds published in prestigious newspapers, taken as a proxy for national public discourse. Perhaps this was the case in 1956, but it is far less tenable today. Television and new media forms do not simply replicate the discourse of the elite press; they often engage a wider set of arguments and evidence, and construct very different narratives than those to be found in *The New York Times* (whose coverage itself became a political issue in the run-up to the invasion of Iraq). Attempting to explain Operation Iraqi Freedom without mention of FOX News seems a tragic enterprise indeed.

For all the brilliance of his descriptive analysis, Smith is less successful in explaining when and why one genre is likely to triumph. Apocalyptic narratives may explain why a large portion of the American people supported war with Iraq in 2003, but not why the George W. Bush administration sought the war in the first place. No explicit theory links these narratives with an actual position toward the war. At best, Smith shows how public narratives constitute one permissive condition allowing politicians to move toward war.

Smith succeeds at presenting new insights into the dynamics of public debate about war, if not at his avowed ambition of presenting a causal theory of war. Regrettably, he ignores decades of constructivist international relations theory that could have helped fill in the missing causal pieces. Without those foundations, casting questions of war and peace as literary genre wars offers a useful thought experiment, but not a coherent alternative theory of the causes of war.

MARC LYNCH
Williams College

Strategies of Dominance: The Misdirection of U.S. Foreign Policy *by P. Edward Haley. Baltimore, MD, Johns Hopkins University Press, 2006. 304 pp. Cloth, $55.00; paper, $22.95.*

This useful book marshals extensive secondary materials on U.S. foreign policy from George H.W. Bush through George W. Bush to support the view that there is considerable overlap among the assumptions underlying the foreign policies of these three administrations—assumptions that go to make up what P. Edward Haley calls "the post-Cold War paradigm" (passim). The

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presentation is revealing, but somewhat unsystematic, because it is not informed by a theoretical perspective that would guide categorization of the key elements in each president's foreign policy.

The analysis of what Haley, in the subtitle of the book, terms "the misdirection of U.S. foreign policy" is interesting, because most studies of the period have tended to focus on the differences between the foreign policies of the administration of Bill Clinton and that of Bush II—the more so as the imbroglio in Iraq and the continuing emphasis on "the war on terror" have shaped even experts' views of the two administrations.

The book asserts that American decision makers adopted a new foreign policy paradigm starting in 1990, combining "assumptions drawn from the past, such as American exceptionalism, democratization, economic sanctions, and coercive diplomacy, and others that came out of the unexpected end of the Cold War, such as American primacy, bandwagoning, and globalization" (p. 2). It argues that the three presidents "agreed about fundamental assumptions and disagreed over means rather than ends" (p. 3).

Haley recognizes that there are significant differences. Clinton was more of a "liberal institutionalist," the term often applied to his emphasis, largely shared with his predecessor George H.W. Bush, on multilateralism and reliance on international institutions, while the current Bush administration has, until recently, emphasized its disdain for the United Nations and its preference for "going it alone" in hopes that others would "bandwagon," or follow along, either because they had no viable alternative or because they came to see the wisdom of the Bush policies.

Progress in developing systematic ways of describing and explaining foreign policies depends on efforts to conceptualize the key elements of the worldviews underlying and informing those policies. Some scholars have made efforts to do just that for political worldviews more generally. The pioneer in this effort was, of course, Nathan Leites, who developed his concept of the "operational code" and applied it in his studies of the Soviet Politburo and French politics. (Haley uses this term early in the book, but without attribution or systematic application.) Subsequent efforts employing either that concept or others, such as cognitive maps, have been made, but none has yet captured the imagination of enough researchers to constitute a standard way.

Nonetheless, had Haley employed one of the existing conceptual schemes, or even developed his own, the similarities and differences among the three administrations' foreign policies that he helpfully teases out and expresses in a series of guidelines could be even clearer, and our understanding of foreign policy more generally could have been advanced further. Nonetheless, this is a valuable and interesting book as it stands.

Haley concludes that unless the United States recognizes the weaknesses of the post-Cold War paradigm and seeks new ideas as the basis for foreign policy—an eventuality he expects to require a sustained national debate—it will

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continue to flounder in the world. In his concluding chapter, he offers his own general suggestions of ways in which that discussion might go. His suggestions will be welcomed by those unhappy with current American foreign policy, though they are not particularly novel or penetrating. The comparative account of the three administrations' foreign policies, by contrast, is a real contribution to our perspective on the past fifteen years.

DAVID V. EDWARDS
University of Texas at Austin

Counterinsurgency and the Global War on Terror: Military Culture and Irregular War *by Robert M. Cassidy. Westport, CT, Praeger Publishers, 2006. 224 pp. $49.95.*

In a very timely, interesting, and thought-provoking book, Robert Cassidy argues for re-conceptualizing what was first called the "global war on terrorism," then the "global struggle against violent extremism," and currently, the "long war." He argues that the prolonged struggle against al Qaeda and its affiliates should be seen as a global counterinsurgency, which requires an appropriate strategy, integrating national and international resources and agencies. Conceptualizing the "long war" as a global counterinsurgency requires also rethinking military culture, doctrine, and interagency coordination, and Cassidy's book does just that. The author analyzes well the challenges great powers have faced in the so-called small wars (pp. 21–35). Especially after the Vietnam War, the U.S. military became very resistant to getting involved in such wars, and it continued to organize and train for large-scale conventional warfare, even when its Cold War enemy, the Soviet Union, was collapsing and the so-called operations other than war (OOTW) were demanding increasing attention. The American military's cultural preference for "big" wars has marginalized counterinsurgency and stability operations and has led to "inability to develop strategy and doctrine" for counterinsurgency (p. 118).

Cassidy maintains that in order to be able to prosecute a successful counterinsurgency campaign, the U.S. military needs to undergo a cultural change and embrace counterinsurgency as a core competency for the long term (p. 19). The 2001 war in Afghanistan and the 2003 war in Iraq spurred the military to take some significant steps toward overcoming its cultural bias against OOTW. While currently all national security and military strategy documents mention explicitly the need to improve U.S. capacity for irregular warfare, Cassidy correctly argues that much more still remains to be done (pp. 32–35).

In addition to the U.S. case, the book also includes two chapters that focus on the military cultures of Russia and Britain—how military culture has affected the capacity of these countries to conduct counterinsurgency operations, and the lessons from their experience. These chapters are interesting and useful, and would be understood even by readers who are not very

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familiar with the context or the history of each case. Although the author shows that in each case, there were some unique social, political, and ideological factors at work, he also manages to draw valuable lessons for militaries fighting insurgencies, including those ongoing in Afghanistan and Iraq. While the case studies are well researched, the author could have consulted more-recent sources for the chapter on British military culture, and counterinsurgency in particular.

Based on a discussion of the American, British, and French experience, the last chapter, "Success in Counterinsurgency," sums up some of the effective techniques for fighting counterinsurgencies, such as: "employ force minimally but credibly and persuasively; ensure there is a unified and joint civil-military and interagency approach; take all measures to enhance the perceived legitimacy of the government; co-opt and include the political opposition ... into the political process; [and] maximize the employment of indigenous forces early" (p. 163). Since the above recommendations are gaining wide acceptance, one wishes the author had elaborated more on his ideas as to how exactly these could be achieved. His suggestions in the conclusion of the last chapter, while interesting, are underdeveloped.

Overall, the book is well written, albeit repetitive in places. In this regard, as well as for eliminating typing errors, more editorial assistance would have been helpful. Although some of the arguments are not entirely new and could have been presented in a more concise fashion, the book is nevertheless a useful and important addition to the scholarship on counterinsurgency.

DESSIE P. ZAGORCHEVA
Columbia University

Terror on the Internet: The New Arena, the New Challenges *by Gabriel Weimann. Washington DC, U.S. Institute for Peace Press, 2006. 308 pp. $24.95.*

The Internet has dramatically lowered communications costs, allowing political groups to reach larger audiences and organize more easily across distances. No surprise, then, that terrorists use the Internet to advance their ends. Gabriel Weimann's *Terror on the Internet* is a helpful guide to how they go about doing so.

Rather than focusing on a particular group of terrorists, such as Sunni extremists, Weimann aims for breadth. The book is the result of years spent analyzing the thousands of Web sites associated with the forty-odd groups who make up the U.S. State Department's list of terrorist organizations. Weimann also gives a lucid account of the worldwide efforts to counter terrorist use of the Internet and discusses the civil liberties trade-offs such efforts might portend. This scope is impressive, but it means that many groups are mentioned only once, generalizations about them are necessarily shallow, and the counterterrorist policies of any particular nation get only slight attention. Still, the reader cannot help but become well informed.

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Commendably, Weimann focuses more on what terrorists actually do online than on what they might do. Thus, one chapter focuses on terrorist use of the Internet for communication and another on instrumental uses like training and recruiting. A convincing chapter debunks the more alarmist fears about cyber-terrorism. Weimann notes that cyber-terrorism has never occurred and that many experts doubt the ability of today's terrorists to kill people through acts of Internet-enabled sabotage.

This is the kind of sober analysis that most recent writing about terrorism lacks. Unfortunately, the book is less tough-minded in other areas. The reader is told, for instance, that the U.S. invasion of Afghanistan has forced al Qaeda to use the Internet as "a virtual training camp" (p. 127). This is true, but like most authors who repeat this fact, Weimann does not bother to point out that training online is less useful than training in person, where one can interact with the trainer. This must be a reason why the U.S. Marines have not moved basic training online.

Likewise, the book argues that terrorists, al Qaeda in particular, have followed the business world and adopted "decentralization, segmentation, and delegation of authority" (p. 116). This description of terrorists' structure confuses strategy with disorganization. Al Qaeda is not a path-breaking organization that decided to decentralize. It is an ideology comprised of disparate elements that cannot unite because they are geographically diffuse, hounded by law enforcement, and unable to communicate openly. Decentralization has advantages, but so do hierarchy and bureaucracy, which allow a division of labor and knowledge accumulation. Weimann also claims that terrorists' non-hierarchical organization makes the Internet, with its international reach, simple access, and anonymity, an "ideal arena" for terrorism (p. 16). But the Internet is hardly ideal for planning attacks. Electronic messages endanger the operational secrecy that successful terrorism requires and are no substitute for meetings. Web sites allow your adversaries to see everything your friends can.

Weimann also has an unfortunate tendency to embrace trendy-sounding ideas that only shroud his meaning. He repeatedly adds the prefix "cyber" to nouns that would suffice alone, such as "cyberthreat" (p. 28), cyberpolitics (p. 23), cybercrimes (p. 238), and so on. He tells us that today's terrorists are "postmodern" (p. 15) without explaining what this label means. He approvingly cites the claim that we live in a "post-international" (p. 24) world, where technology has rendered states less important, without offering evidence of their decline.

These flaws are mere distractions, however. Anyone interested in understanding how terrorists are using the Internet to compete in the political marketplace of ideas would benefit from reading this clear and informative book.

BENJAMIN H. FRIEDMAN
Massachusetts Institute of Technology

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Blind Oracles: Intellectuals and War from Kennan to Kissinger *by Bruce Kuklick. Princeton, NJ, Princeton University Press, 2006. 241 pp. $29.95.*

As a lot, intellectuals are well to the left of other Americans in their political views. When they are politically involved, it is frequently in the leadership of liberal or radical movements to achieve social change or to oppose wars. In *Blind Oracles: Intellectuals and War from Kennan to Kissinger*, Bruce Kuklick, a historian of ideas at the University of Pennsylvania, looks at a different breed of minds: those the journalist Theodore H. White called "action intellectuals" (Edward T. Thompson, ed., *Theodore H. White at Large: The Best of His Magazine Writing, 1939-1986*, New York: Pantheon Books, 1992, pp. 387–431). These were scholars who studied deeply in the academy, usually in political science, before going to serve the government and use their knowledge to mold foreign policy. Their ranks include famous presidential advisers such as George Kennan and Paul Nitze from the early Cold War years, Walt Rostow and McGeorge Bundy from the John Kennedy era, and Henry Kissinger from Richard Nixon's time, as well as influential scholars such as Bernard Brodie and Albert Wohlstetter of the think tank RAND and Richard Neustadt and Thomas Schelling of Harvard's Kennedy School of Government.

Creative, ambitious, and stimulating, *Blind Oracles* is conceived as something more than a straight history of ideas about international affairs. It explores not just the content of these thinkers' ideas but how the ideas played out when put into practice. Kuklick finds that by and large, these academics failed to fulfill their benefactors' expectations—or their own hubristic claims—that their ivory-tower learning could guide the nation along a wise course of action. Intriguingly, though, Kuklick stops short of the familiar anti-intellectual complaint that the best and the brightest screwed things up. Most of the time, he suggests, their influence was not terribly significant at all.

Beyond this plausible if unspectacular claim, Kuklick's precise arguments are hard to discern. One reason is the difficulty of the writing, both in its awkward prose and in its lack of flow. Kuklick's immersion in the abstruse intricacies of American philosophy, achieved through his studies of pragmatism and religion, sometimes prevents him from making clear the broader significance of the strains of thought that he parses. Distinctions and terms introduced as organizing rubrics early on drop out in later chapters.

A second reason for the book's opacity may be an uncertainty on Kuklick's part about what generalizations, if any, he ultimately wants to make about his subjects. He insists he is not trying to dole out blame or even to argue that these men's judgments about policy were wrong. But his tone is often disdainful.

Perhaps the most insuperable obstacle Kuklick faces is one that may be built into the very project of writing a history of foreign policy ideas in action—especially one that argues for the slight relevance of the ideas under scrutiny. For if international policy making, despite its high-flown talk of strategies, doctrines, and theories, dispenses with any pretense to philosophical consistency

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as soon as real crises arise, then any deep examination of these strategies, doctrines, and theories is bound to seem, for lack of a better word, academic. Kuklick's conclusion ironically undercuts the rationale for his study.

Still, with its great erudition and subtlety of thought, *Blind Oracles* has much to offer. It is best approached less as a sustained chronicle of change over time than as a series of critical essays. These essays are informed, illuminating, sharply analytical, and unsparing. One can argue with particular assessments—I think Kuklick overrates Dwight Eisenhower's intellect, overstates Kissinger's influence on Richard Nixon, and undervalues the ideas of the realist Hans Morgenthau—but his discussions of matters from the etiology of important concepts like containment and deterrence to the troubled relationship of the university to the "national security state" make the book a distinctive addition to the literature on Cold War thought.

DAVID GREENBERG
Rutgers University

The Comprehensive Nuclear Test Ban Treaty: An Insider's Perspective
by Keith A. Hansen. Palo Alto, CA, Stanford University Press, 2006. 233 pp. $24.95.

This is a very comprehensive and well-written and, at the same time, quite compact survey of what everyone needs to know about the Comprehensive Nuclear Test Ban Treaty (CTBT) and, more broadly, about the entire effort to hold back the spread of nuclear weapons. The basic text of the book comprises barely eighty-four pages, and even these are sprinkled with sidebar tabulations of various parts of the issue. Keith Hansen was involved in the negotiations on and implementation activities for the test ban for more than eight years, and is clearly a master of his subject.

In part, the book is an analysis of why the United States took a major part in the drafting of this treaty but has not ratified it. More broadly, it shows how the failure of the treaty to come into effect hinders the global nuclear nonproliferation effort. It thus will be essential reading for anyone concerned about the future of the Nuclear Non-Proliferation Treaty (NPT) as well as about nuclear testing, and it also has a great deal to say about the roles of China and postcommunist Russia as well as India and Pakistan in these matters, roles often overly simplified elsewhere as either adversarial or cooperative.

While the book is not tendentiously written, the author clearly would have preferred that the treaty had been ratified by the U.S. Senate, and the Foreword by Ambassador Thomas Graham flatly says that the treaty is "without question" (p. xi) in the national security interests of the United States.

The core of the book offers a great deal of detail on the negotiation of the treaty, and then also a detailed analysis of all the haggling that followed in the implementation phases about the exact meaning of its terms. In the process, it offers a collection of data on the history of nuclear testing around the world,

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punctuated by a series of unilateral moratoria and by the various prior treaties that were indeed ratified by all the nuclear powers. The CTBT has been ratified by the United Kingdom, France, and Russia, but failed of ratification by the United States when it was put to a Senate vote in 1999, and China has used the American nonratification as its excuse to hold back.

The book cites some of the substantive arguments advanced against a test ban, for example, from the American nuclear weapons laboratories or from the Pentagon, including issues of safety and reliability, and desires for greater miniaturization of nuclear warheads, but it does not go into such arguments in very much detail. One might perhaps agree with the author's premises and conclusions that such arguments do not outweigh the benefits of the treaty in slowing the spread of nuclear weapons, but (given the length of the book) a fuller account of the opposing view could have been presented. A student of the congressional process or the processes of bureaucratic politics might similarly feel a bit disappointed by the book, in that more details and more-reasoned explanations could have been presented on exactly how the treaty came to be defeated on the floor of the Senate, drawing not even a majority of senators, much less the constitutionally required two-thirds. One senses that some of the blame might have to be directed at Bill Clinton and his administration for not foreseeing that a Republican ambush was coming, and for not investing more time and political capital in winning the treaty's ratification. Hansen's account of the ratification process does not get very deeply into criticisms of either the Republicans or the Democrats. But if ratification of the CTBT is really as important as the book suggests, one wishes that both parties had taken it more seriously.

A final point, on which the book has a great deal more to say, pertains to whether the treaty could really have contributed much to the slowing of nuclear proliferation, given all the other problems the nonproliferation regime has been facing, including the Indian and Pakistani nuclear detonations of 1998, the Iranian and North Korean moves toward the bomb, the purported nuclear weapons program in Saddam Hussein's Iraq, etc. Hansen is very measured in his analysis, basically arguing that the CTBT is more necessary than sufficient, and, in the process, he tells us a great deal about all the other pieces of the puzzle of how to keep weapons of mass destruction from spreading.

More than half of the book is composed of appendices. These are indeed valuable, collecting together in one binder the texts of various treaties and key United Nations resolutions, and other data on the flow of events.

GEORGE H. QUESTER
University of Maryland

The New Lion of Damascus: Bashar al-Asad and Modern Syria *by David W. Lesch. New Haven, CT, Yale University Press, 2005. 320 pp. $30.00.*

To many Americans, Syria is a dark and forbidding place, governed by a harsh dictatorship, a sponsor of terror, an ally of Iran. Under the George W. Bush

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administration in particular, Syria is routinely demonized as a rogue state, a near-member of the axis of evil, and a leading target for regime change. To David Lesch, however, these impressions, and the punitive U.S. policies associated with them, are distorted and counterproductive. They reflect a lack of knowledge among Americans about Syria's recent history and the regional context in which it operates. They misread Syria's young President, Bashar al-Asad, who assumed office following the death of his father in the summer of 2000.

For Lesch, the costs to the United States of demonizing Syria and Bashar are high, and in no small measure self-inflicted. Foremost among these is the erosion of U.S. influence in Damascus, where, Lesch speculates, a better relationship might produce gains in Iraq and Lebanon, and progress in resolving the Syrian–Israeli conflict. No less important, by castigating Bashar as a weak, inexperienced, and malevolent dictator, the United States has neglected his efforts to advance projects of reform at home. As a result, the United States has missed opportunities to buttress Bashar's reformist inclinations and aid in the modernization and political transformation of Syria through gradual, internal change rather than coercive diplomacy.

Lesch's mission is to remake the negative mental map that defines impressions of Syria and Bashar in the United States. His intent is to provide a view of Syria and its young President that would permit a more pragmatic, even if not friendly, U.S. relationship with Syria to emerge. The inspiration for this effort, and what makes the book valuable, is the direct relationship that Lesch developed with Bashar, including extended personal interviews in the spring of 2004 and 2005 and an ongoing E-mail correspondence.

This extraordinary access gives Lesch an exceptional vantage point from which to reflect on Bashar's personality as a leader and to draw him out on his worldview, on his priorities for Syria and for the region, and on his country's relationship with the United States. To provide the historical background and regional context that shaped Bashar, Lesch recounts Syria's post-WWII diplomatic and political history, as well as the Asads's family history. He uses several chapters to assess Bashar's attempts to strengthen Syria's educational system, reform its bureaucracy, and promote innovation and entrepreneurialism among Syrians.

Lesch is not an uncritical observer and declines to paper over either the autocratic and often violent nature of Syrian politics or the corruption that permeates the Syrian state and society. Nor does he overlook Syrian culpability in supporting terrorism, or its strategic blunders in its relations with Lebanon, Israel, and America. He notes Bashar's deep aversion to risk, and his preference for stability over change. Yet Lesch's characterization of Bashar is largely positive. He is presented as a leader committed to his country's modernization, selfless in his devotion to his people, and enjoying wide support at home. For most readers, however, Lesch's characterization will come across as unpersuasive. Indeed, some of the excerpts that Lesch provides from his interviews

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depict a leader who is detached from reality, as in Bashar's emphasis on the importance of having been popularly elected as his father's successor.

Lesch's accounts of his meetings with Bashar make fascinating reading. They suggest that there is more to Syria's President than the United States has yet been willing to see, and this alone is a valuable lesson. Nonetheless, what we have seen of Bashar during and especially in the period following Lesch's interviews supports a less-charitable reading of Syria's President, his status as a reformer, and the prospects for an improved Syrian–U.S. relationship.

Perhaps reckoning that nothing he could do would alter American policies, Bashar has increasingly, since 2003, embraced his role as America's adversary, shed his support for domestic political reform, and adopted a harsh, bellicose tone toward both the United States and Israel. Before concluding, however, that these are postures that might have been avoided had the United States been less antagonistic, it is worth considering that they reflect aspects of Bashar's leadership that are more deeply embedded and more troubling than Lesch seems willing to admit. They underscore that U.S.–Syrian tensions, however exaggerated they have become during the Bush presidency, are based on fundamental differences. Finding ways to diminish such tensions and establish a more constructive U.S.–Syrian relationship is indeed essential. Whether these aims are well served by imagining Bashar as a benign autocrat whose reformist impulses the United States can help to unleash is far less clear.

STEVEN HEYDEMANN
Georgetown University

Reaching for Power: The Shi'a in the Modern Arab World *by Yitzhak Nakash. Princeton, NJ, Princeton University Press, 2006. 248 pp. $19.95.*

One of the biggest changes in Middle Eastern politics in the last twenty-five years has been the increased visibility of the Shi'a in the public sphere. For centuries, the Shi'a were a suppressed group in the Arab world, and its leaders practiced a form of political quietism. Today, however, the Shi'a are starting to exert themselves politically. In many ways, the Middle East is, therefore, entering a new and uncertain political terrain. The Shi'a also happen to live in the areas that have the world's largest oil reserves. These two factors will undoubtedly contribute to the Shi'a being in the middle of the major geopolitical transformations that could take place in the Middle East.

Yitzhak Nakash's book, therefore, couldn't be more timely. His previous book was an excellent, well-researched, and ground-breaking study called *The Shi'is of Iraq* (published by Princeton in 1994) and established him as the authority on the history of Shi'ism in Iraq. *Reaching for Power* is a different book and more succinct. In this short book, he provides an overview of the political experience of the Shi'a communities of Bahrein, Iraq, Lebanon, and Saudi Arabia. After a brief prologue in which he maintains that a Shi'i-led reformation is taking place in the Middle East, he provides a country-by-country

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account of the often uneasy relations between the Shi'is and their respective governments. He describes the difficulties of Saudi Shi'is living "under the shadow of Wahhabism" (p. 43). The main focus of the book is the struggle for power in Lebanon and Iraq. Nakash contrasts the historical development of these two countries, demonstrating how the Iraqi Shi'is were suppressed by Sunni minority rule from 1921 to 2003, whereas in Lebanon, the Shi'a emerged in the last twenty-five years as the country's principal sect and demanded more political and economic power. In the conclusion, he assesses the role of the United States in Iraq and the role that the Shi'a could have in the future. Nakash does not offer any specific remedies, but rather points out that the United States needs to understand that the Shi'is are now a political force in the region, recognize "that not all Islamists are alike, and develop a broad strategy for the Middle East that actively engages the moderates as part of the solution" (p. 163).

In many ways, this is a useful book that offers brief accounts of the Shi'a in these four countries. It is based on extensive research in which he conducted interviews with a number of leading Shi'a and utilized a number of Arabic sources. Yet, given his earlier work and the importance of this topic, this book is ultimately disappointing. It is too brief to give justice to the topic. The overviews are facile, and generally, the book seems rushed. Nakash does not explain sufficiently how different each of these Shi'a communities are, leading one to believe that the Shi'a act in tandem. In his discussion, he does not fully take into account the realities and experience of the nation-state. For example, do Iraqi Shi'a consider themselves primarily Iraqi or Shi'a? Generally speaking, we tend to underestimate the nationalistic elements of identities in the Middle East. In this book, the impact of nationalism was not sufficiently stressed or explained. Overall, though, it is a fine beginning of what promises to be one of the topics of years to come.

MAGNUS T. BERNHARDSSON
Williams College

Uniting Africa: Building Regional Peace and Security Systems *by David J. Francis. Brookfield, VT, Ashgate Publishing Co., 2006. 278 pp. Cloth, $99.95; paper, $39.95.*

This book is far more nuanced and pragmatic than either its cover (a dove superimposed on the African continent) or its "unite or perish" (p. 1) opening sentence would imply. Admittedly, scholars on Africa tend to gravitate toward either the Afro-pessimist or the Afro-optimist camp. What makes *Uniting Africa* such an interesting read is that David J. Francis argues for qualified optimism from a position that is heavily informed by pragmatism but never succumbs to pessimistic resignation. Francis's general argument is that African states, facing multiple problems and challenges, are moving in the direction of pooling their sovereignties to create systems of collective regional peace and security. Given the current political crises and multiple civil wars

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beleaguering the African continent, one might be tempted to dismiss Francis's book as a flight of fancy. What emerges, however, is a thoughtful, insightful, and nuanced call for pragmatic optimism.

Moving beyond the used and abused notion of Pan-Africanism (chapter 1), Francis employs a regional level of analysis, in part because of the uniqueness of the African state. Francis argues, correctly, in my mind, that "the state" in Africa is not a homogenous, unified, or static entity, but "is dynamic and constantly evolving in response to its domestic and external environments" (p. 37). This has presented Africans with new security threats, and unique obstacles to and opportunities for dealing with them.

In reviewing the theoretical literature on the causes of African conflicts (chapter 3), Francis does an admirable job of separating the wheat from the chaff. Africans currently suffer from the regionalization of violence as armed conflicts spill over state borders, creating regional insecurity zones, most notably in west Africa (Liberia, Sierra Leone, Côte d'Ivoire), central Africa (the Sudan, Uganda, Rwanda, and the Democratic Republic of Congo) and on the Horn (Somalia, Ethiopia, Eritrea). The regional spread of conflicts is not necessarily new, but Francis argues that what is novel is the regionalization of conflict management. Francis argues that the "Try Africa First" approach to conflict resolution (in which African states and regional organizations attempt to manage the conflict in lieu of external interventions) has been a positive development.

Chapters 4 and 5—which examine the development of humanitarian interventions by regional organizations and the Organization of African Unity–African Union attempts at peacekeeping, respectively—provide the crux of Francis's argument: that there is an emerging phenomenon in the regionalization of conflict management that relies on regional collective security organizations and the United Nations. Francis identifies a trend of activist regional organizations or "coalitions" of the "willing" (p. 135; Francis's appropriation of a Bush-ism, not mine). Importantly, Francis argues for the role of regional hegemons to both take the initiative and build regional consensus. But, as Francis the pragmatist notes, African states are too resource-strapped to achieve success, though that has not stopped them from realizing that regional conflict management is in their best interest. What is needed are external actors (UN, EU, etc.) willing to play a supporting (financial) role in these operations.

The book ends with the three chapters that provide empirical evidence and lessons/warnings for Francis's vision. Chapter 6 examines the example of the Economic Community of West African States Monitoring Group, chapter 7 that of the Southern African Development Community, and chapter 8 that of the Intergovernmental Authority on Development in the Horn. These chapters are rich in detail, and Francis does not shy away from pointing out the mistakes, problems, and failures in these attempts at regional conflict management. Nor does he attempt to glorify the limited successes. As he argues, "To dismiss these home-grown initiatives as amounting to nothing implicitly conveys the negative mentality and mindset concerning the development and

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future of Africa" (p. 240). Whether you share in his optimism or not, Francis has written an important and provocative book.

KEVIN C. DUNN
Hobart and William Smith Colleges

Building New Deal Liberalism: The Political Economy of Public Works, 1933-1956 *by Jason Scott Smith. New York, Cambridge University Press, 2006. 300 pp. $75.00.*

In this carefully researched, well-written, and persuasively argued book, Jason Scott Smith fills an important gap in our knowledge about the New Deal and its legacy. Smith's thesis is that the New Deal's public works programs revolutionized the role of the federal government in economic development and had a lasting impact on the state and economy. The Public Works Administration (PWA), Works Progress Administration (WPA), and similar agencies transformed the physical landscape and laid the foundation for the post-World War II economy. Smith catalogs the huge scale of this endeavor, the construction of a vast number and variety of facilities—streets and highways, bridges, hydroelectric plants, airports, parks, schools, flood control and reclamation projects, and public buildings of every kind.

The New Dealers built more than physical structures, as the book's title suggests. Public works were central to the New Deal's public philosophy, state- and economy-building efforts, and strategy for consolidating its regime. Smith agues that liberal and leftist scholars have failed to appreciate the broad, multifaceted role of public works, focusing only on their inability to end mass unemployment and their aim to prop up a faltering capitalist order. Public works reoriented the role of the federal government in economic development and had a long-term impact on the strength of the U.S. economy. This argument is particularly compelling when he demonstrates the New Deal's profound impact on the post-World War II interstate highway system and military-industrial complex, which were vital to tying together the nation's economy, developing the South and West, and pursuing the containment of communism.

From the start, New Dealers were divided over whether improving infrastructure or putting people back to work should take precedence. The PWA, under Harold Ickes, opted for building hydroelectric dams and other large-scale public works. Ickes's contention that the projects spurred sizable job growth indirectly, through the private sector, did not impress Roosevelt, which led him to create the WPA, whose projects stressed putting people to work directly. The debate over "projects versus people" was misplaced, according to Smith; the WPA constructed, rehabilitated, and improved a large share of the public infrastructure, and the PWA created a great deal of employment (indirectly).

Those who ran the PWA and WPA confronted problems familiar to anyone who has implemented public employment programs. States and localities

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fought over shares of the money. Agencies that received funding were tempted to use it to replace other funding (thus creating no additional jobs or facilities). Administrators tried to balance careful planning with creating jobs quickly and keeping the programs free of corruption cronyism at the same time that they were used to build political support for the New Deal.

Republican criticism of the projects as wasteful "boondoggles" had little impact. The projects were highly visible, and federal money for them poured into virtually every county in the country. Most importantly, the public liked them. But the New Dealers' unabashed use of the programs to build loyalty to the Democrats (rather than Americans' anti-government political culture, according to Smith) ignited a political backlash that led to restrictions under the Hatch Act. Rising employment during World War II and a more conservative Congress brought to an end the New Deal's public works. Congress consolidated the remnants of the agencies into the General Service Administration, whose role was limited to managing federal property.

Smith acknowledges that the public works programs enjoyed mixed success, at best, in promoting social justice and other liberal goals. His most disturbing finding is that the public works agencies played a major role in carrying out the internment of Japanese Americans during World War II. Still, judged against the broad goals of many New Dealers—to build a stronger economy, state, and regime and transform the physical landscape—their performance was impressive. For illuminating this record of accomplishment, *Building New Deal Liberalism* should be read by New Deal historians and political scientists interested in the intersection of U.S. politics and policy and the economy of the twentieth century.

GARY MUCCIARONI
Temple University

Five Days in Philadelphia: 1940, Wendell Willkie, and the Political Convention that Freed FDR to Win World War II *by Charles Peters. New York, Public Affairs, 2006. 274 pp. $13.95.*

The Second World War changed the world so completely that it has incited what might be called a literature of "what if?" Had some significant event happened another way, how different might life have been? Classics range from George Orwell's *Nineteen Eighty-Four* to Philip Roth's recent *The War Against America*. And now Charles Peters weighs in with *Five Days in Philadelphia*.

Like Roth, Peters, the founder and former longtime editor of the *Washington Monthly*, focuses on the pivotal 1940 presidential election, which returned Franklin D. Roosevelt to an unprecedented third term in office. In Roth's novel, the Nazi sympathizer Charles Lindbergh is elected president and makes a pact with Hitler; riots and pogroms ensue. In Peters's account, the counterfactual is more subtle: What if Wendell Willkie, an energy industry executive consigned to the recycling bin of history, whose most lasting legacy has heretofore

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been his name on a dormitory on the campus of our mutual alma mater, Indiana University, had not secured the Republican nomination that year?

The answer—that Roosevelt would have had a tougher time gaining a peacetime draft and Lend Lease aid to Britain—is not nearly as compelling as the account, which is equal parts memoir and popular political history. As a teen, Peters followed Willkie, his Republican opponents Thomas Dewey and Robert Taft, and Roosevelt, his hero, the way most boys his age pursued the exploits of Joe DiMaggio, Hank Greenberg, and Ted Williams, and weaves a personal tale with one of a fascinating political convention and its aftermath. *Five Days in Philadelphia* retrieves Willkie and provides a strong sense of what it must have felt like for a thinking person following the news to be living in the United States after the fall of France in June 1940 made the world a much less certain place.

For most readers, including political scientists not well versed in the history of American politics, the convention coverage will be an eye-opener. Willkie was able to win the Republican nomination, despite having held no previous political office, being a lifelong Democrat, ignoring primaries, having a reputation for skirt chasing and alcohol consumption, carrying on openly with his mistress in New York while his wife and son remained back home in Indiana, and surviving six ballots, five more than standard for nominating conventions nowadays.

And in an age in which the mass news media is claimed by the American political right to have unlimited power to advance the agenda of the political left, despite the existence of the FOX network, *Five Days in Philadelphia* tracks a kind of vast media conspiracy to promote both internationalism and the Willkie candidacy. *Life* magazine, equivalent in influence circa 1940 to all of today's national newspapers, magazines, and television network news programs combined, ran a glowing eleven-page spread on Willkie that bathed even his family life in a favorable light.

Students of politics and the media will wish that Peters, who relies mainly on print media, secondary sources, and memory, had analyzed more thoroughly how the structure and practices of the media made this possible. Students of contentious politics will be left wanting to hear more about the number, nature, and influence of the Willkie clubs that popped up to support his candidacy and the America First Committee squaring off against the Committee to Defend America by Aiding the Allies. But this is not that kind of volume.

And what if Willkie had not been nominated? Well, pretty much everything that happened would have happened anyway. Roosevelt would have been reelected, Britain would have persevered until Hitler foolishly attacked the Soviet Union, America would have been bombed into the war by way of Pearl Harbor, and the Allies would have triumphed. But there probably would have been a different name on the dorm, and there would not exist this engaging book, which is reason enough to be thankful.

EDWIN AMENTA
New York University and University of California-Irvine

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No Child Left Behind and the Transformation of Federal Education Policy, 1965-2005 *by Patrick J. McGuinn. Lawrence, University Press of Kansas, 2006. 260 pp. Cloth, $40.00; paper, $19.95.*

Washington's increasing attention to American schools suggests three interesting puzzles that Patrick McGuinn explores in this study of federal education policy. Why have liberals and conservatives both supported a more active federal role in education? Why did this expanded role unfold during a period when devolution and deregulation were gaining momentum? How does one account for major policy changes that often seem unlikely to occur in the American political system?

McGuinn answers those questions by focusing on the evolution of federal education policy since 1965. Analytically, he uses a "policy regimes" approach that he argues is better at capturing change than other models such as punctuated equilibrium theory (pp. 11, 209) or approaches that focus narrowly on specific causal mechanisms (pp. 16, 17). The book is informed by rich sources, including elite interviews, primary and secondary documents, and public opinion polls. McGuinn marshals his evidence to briefly summarize policy changes from 1965 to 1988, before offering detailed chapters on the 1988 to 2005 period, the book's primary focus.

McGuinn argues that the No Child Left Behind Act of 2001 (NCLB) signaled the clear emergence of a new policy regime that had been building since 1988. No longer do federal policymakers simply focus on ensuring equity for disadvantaged students and monitoring policy inputs, he says. Rather, McGuinn sees a fundamentally new regime that now stresses excellence for all students, backed by high-stakes accountability for results. That shift, McGuinn notes, was built by conservatives and liberals who charted a middle path while sidestepping the preferences of key interest groups in their respective coalitions.

This book is required reading for students, scholars, and policymakers who seek a historical account of the evolving federal role in education. McGuinn provides great launching pads for several discussions about the policy and politics that Washington's efforts have fostered. Consider, for example, his view that the equity regime guiding the original Elementary and Secondary Education Act was "eviscerated" (p. 50) by events during the 1980s and eventually replaced by a new regime focused on educational excellence for all students. While federal officials now discuss achievement for all, it may be that excellence has not replaced, but rather joined, equity as an additional federal concern in a hybridized equity-excellence policy regime. Even today, leaders such as President George W. Bush, Representative George Miller (D-CA), who was a key architect of NCLB, and others who McGuinn quotes (for example, pp. 136, 141, 142, 159) emphasize the need to eliminate glaring achievement gaps between advantaged and disadvantaged student groups. Also, NCLB's authorizing provisions still distribute funds based primarily on economic need. In short, an equity impulse remains, even as excellence has

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become more important. McGuinn's account will help focus debates over the tensions between equity and excellence and the government's ability to promote both.

The book will also inform discussions about how federal education policy has influenced the American federal system more generally. McGuinn argues that NCLB represents a "new educational federalism," in which Washington is now a "national schoolmarm ... whacking those states that fail to record satisfactory and timely progress toward federal education goals" (p. 195). Clearly, federal policymakers now act more aggressively in K–12 education. But some authors (myself included) have argued that Washington's willingness to offer the states flexibility on NCLB's key requirements, and its reliance on the states to develop curriculum standards and tests, illustrate how state preferences remain powerful forces that help shape federal policy. By addressing the federalism issue, though, McGuinn provides a great vehicle for informing debates about how subsequent federal education efforts will likely affect relationships across the American federal system.

PAUL MANNA
College of William and Mary

School's In: Federalism and the National Education Agenda *by Paul Manna. Washington DC, Georgetown University Press, 2006. 209 pp. $26.95.*

The case for a new view of federalism is given credence through an exhaustive analysis of the national education agenda in the twenty-first-century United States. The author's "borrowing strength" (p. 5) model highlights a new way to view the politics of power within the federal system. In the past, power was often studied in terms of its distribution and use. The preferences of those with a significant amount of power tended to sideline the preferences of those with little or no power. Even developments in network theories of federalism have a tendency to look at significant hubs as loci of power and influence, implicitly identifying weaker network regions and areas of minimal influence.

Paul Manna's analysis, however, invites the reader to consider federalism at a more complex level. The "borrowing strength" model argues that while actors within a federal system can be identified nominally, power can be shared for greater influence at particular policy moments. According to Manna, borrowing theory can be studied by focusing on two dimensions of policy: the capacity and the license of government to act. When a government has both the capacity and the license to act, then government is likely to create policy. When a government has neither the capacity nor the license to act, then policy entrepreneurs are "standing by" (p. 34), anticipating the opening of a policy window. In most instances, however, the distinctions are not as sharp. A government may have the capacity but lack the license to act or vice versa; government then seeks to borrow strength from other actors who are likely to

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possess the capacity or the license to act and essentially lend influence to actors who are in need of it in promoting a policy.

National education policy initiatives such as No Child Left Behind (NCLB) prove to be a solid case for study to demonstrate the utility of borrowing strength theory. Through a longitudinal analysis of education policy interest and influence, the author illustrates the growing interest of the national government in K–12 education policy over the last four decades. National interest has been buttressed by fairly steady presidential support for a national policy solution. National budget commitment to education has grown tremendously, although political parties differ over specific educational priorities. Consider the history of U.S. federalism: national influence relies on state and local strength; their role cannot be ignored in analyzing education policy.

Manna's thesis, therefore, has very important implications for how to best study the implementation of NCLB. Critics of the sweeping education policy reform often view it as a national-level effort to further enhance the national influence in K–12 education policy. If Manna is correct, then national education policy entrepreneurs must borrow strength from state and local actors in order to implement policy. The presidency must also maintain efforts to borrow strength from Congress. Manna's interviewees indicate that the effort to maintain these strength-borrowing ties contracted over time, limiting the capacity to borrow needed influence.

Manna has developed a novel way to consider the nature of federalism. His analysis of NCLB and other national education policies should be required reading for individuals interested in pursuing education policy as a course of study.

CHRISTOPHER A. SIMON
University of Nevada, Reno

Common Ground: Committee Politics in the U.S. House of Representatives *by John Baughman. Palo Alto, CA, Stanford University Press, 2006. 272 pp. $50.00.*

Often in politics, jurisdiction is power. Within the U.S. Congress, for example, legislators influence public policy largely through their committee assignments, which grant them important first-mover advantages in the crafting of legislation and oversight of the executive branch. Most major policy issues are wide-ranging in scope, however, and thus not especially conducive to clear-cut lines of responsibility. On Capitol Hill, jurisdictional boundaries often overlap, and conflict over turf is commonplace. In this valuable new book, John Baughman identifies the conditions associated with conflict and cooperation between House committees over turf and sheds valuable new light on inter-committee bargaining, the role of party leaders in managing the committee system, and the consequences of jurisdictional fragmentation for policy making in the modern House. The book is essential reading for congressional scholars for several reasons.

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First, Baughman exhibits a nuanced understanding of the history of jurisdictional politics and an insider's knowledge of how committee leaders and staff deal with jurisdictional issues. For instance, he provides the most compelling description that we have of the effects on inter-committee relations from the Bolling reforms of 1974 and the GOP rules changes of 1995. In preparing the book, Baughman conducted dozens of interviews with legislators, committee aides, and parliamentary staff, and it shows. His book is a great illustration of the benefits to be derived from a "multi-method" approach to gathering data.

Second, the book breaks important new theoretical ground for conceptualizing about legislatures. Baughman applies concepts from transaction costs economics to generate predictions about when jurisdictional conflict will break out between House panels. Somewhat counter-intuitively, regular interactions between committees over shared jurisdictional responsibilities are conducive to more, rather than less, cooperation over turf and legislation. Baughman's conceptual framework also helps us understand the conditions under which partisan, distributive, and informational models will have the most explanatory power over inter-committee politics, helping to clarify perhaps the central conceptual controversy in recent congressional scholarship.

Third, the author subjects the predictions of his conceptual framework to a wide range of rigorous and substantively interesting empirical tests. There is a wealth of new evidence about committee bargaining and leadership strategy in this book. To my knowledge, he is the first scholar to simultaneously model the determinants of legislative success at the committee and floor stages (using bivariate probit). He conducts a multivariate analysis of the use of committee "waiver letters," which serves as an imaginative and useful indicator of inter-panel reciprocity. Baughman uses a number of case studies, such as an analysis of trade legislation during the 105th Congress, to add rich perspective about how potentially competing committees can work together to build majority coalitions. The chapter on the role of party leaders includes a first-rate analysis of the mechanisms and strategies used by the House leadership to coordinate policy making when jurisdiction over issues is shared by two or more standing committees.

In short, *Common Ground* raises and answers some important normative questions about committee politics. It features insightful theorizing about inter-committee bargaining. And it marshals extensive evidence about the consequences of overlapping jurisdictional boundaries for member behavior and the content of legislation. Although the analysis is systematic and rigorous throughout, Baughman does a great job of integrating anecdotes and examples, and the book is extremely well written. It should be of value to any informed reader with an interest in the congressional legislative process.

C. Lawrence Evans
College of William and Mary

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Democracy, Inc.: The Press and Law in the Corporate Rationalization of the Public Sphere *by David S. Allen. Champaign, University of Illinois Press, 2005. 216 pp. $30.00.*

David Allen's book provides unique insights into the complex and often self-serving relationships that exist between the press, the law, and American corporations. This book has challenged me, as a broadcast law professor and a working television journalist, to rethink how corporate ideology makes its way into the marketplace of ideas in our culture.

Specifically, Allen argues that corporate values have become the values of society as a whole. His main thesis is that both the press and the law play central roles in the transfer of this corporate ideology to the public sphere, a process he calls "corporate rationalization." Through careful and thoughtful analysis of history, court rulings, and journalistic practices, Allen argues that corporate rationalization has fundamentally changed how American democracy functions.

Allen does a thorough job of analyzing the impact of major court cases such as *Branzburg v. Hayes*, an ambiguous Supreme Court ruling about journalists' rights to protect the identities of confidential sources. Allen forces the reader to look at the impact of *Branzburg* and other rulings from previously unexplored perspectives. He does not assume that the reader has prior knowledge of such rulings. He takes us through case histories and court opinions, and then carefully dissects each court decision. With each analysis, Allen bolsters his theory that modern democracy has come to be defined by the actions of the elites in society. The courts, though, have frequently disagreed about whether journalists are members of this elite. However, Allen doesn't limit his analysis to classic media cases. Court rulings involving parades, public parks, and even interstate rest areas receive his scrutiny as well. He skillfully demonstrates how corporate rationalization has affected First Amendment jurisprudence in cases involving all sorts of public venues.

Allen also looks at how corporate ownership of large media organizations has a major impact not only in how journalists report stories but also in how they choose which stories should appear on the front page or be shown on the nightly television news. This was the only part of the book in which I wish Allen had provided more examples and analysis to back up his thesis. As a journalist, I've seen the subtle and often not-so-subtle pressures that corporate ideology places on the day-to-day operations of a newsroom. Keep in mind that this is a minor complaint about the book, and it may simply reflect my personal desire to read more "dirt" about this particular topic.

The most pro-active part of the book is the last chapter. Here, Allen challenges the media in particular to resist corporate rationalization, saying such resistance is vital to protecting our democracy. The final pages provide an excellent conclusion to the text, incorporating material from previous chapters to bring home the point that both the courts and the press can and must do more to open citizen access to the "public sphere." His suggestions for reform

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are certainly not new. Many authors in recent years have written about the impact that the "corporatization" of the media has had on the dissemination of information. Allen's writing, though, is clearly the most in-depth look at the topic. In this chapter and throughout his book, Allen also applies discourse theory to show how an informed public is not necessarily an active public.

This book has great potential in a variety of college classroom settings, from journalism to law to political science. It is a book that will get students and professors thinking and talking.

ROGER L. SADLER
Western Illinois University

The Hard Count: The Political and Social Challenges of Census Mobilization *by D. Sunshine Hillygus, Norman H. Nie, Kenneth Prewitt, and Heili Pals. New York, Russell Sage Foundation, 2006. 156 pp. $27.50.*

The 2000 census took place against a backdrop of a deteriorating record of completeness in the count and an increasing public resistance to survey takers. Spurred by a sense of urgency, Congress authorized the Census Bureau to conduct an unprecedented campaign to mobilize the public to mail back the 2000 census forms. The Bureau commissioned advertising, staged promotional events, and coordinated with local governments, businesses, and organizations to promote the civic benefits of census response.

This book, by two young and two veteran scholars, one the director of the census in 2000, is an evaluation of the Census Bureau's campaign. Just as the campaign began, the authors fielded a survey to assess the public's reaction to the mobilization effort. They recruited a panel of respondents, each of whom completed an initial survey and one of three succeeding surveys, all administered via the Internet.

The authors faced an interesting methodological challenge in the nature of a universal count itself. While the study's design enabled them to observe changes in exposure at the individual level, the campaign's "treatment" covered the entire population, and differences across individuals were still differences in self-exposure, whether deliberate or incidental. The challenge was to disentangle the effects of the promotional campaign from other factors that could heighten the probability of exposure and census participation simultaneously.

The authors show that people who gained knowledge about the census in the course of the campaign were significantly more likely to mail back their census forms. Their attribution of success to the campaign is consistent with the final response rate, which reversed—modestly—a three-decade decline.

Wise to the inferential challenge, though, the authors investigated the relationship between census response and civic engagement, the factor most apt to confound through its relationship to the likelihood of exposure and response both. They demonstrate, strikingly, that civic engagement and census participation were in fact entirely uncorrelated.

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The authors also exploit a second objective of the census' campaign to good inferential effect. Concerned by the worsening undercount in minority communities, the census targeted minorities for more-intensive mobilization. The campaign raised knowledge of the census among blacks and Latinos to or beyond the level among whites. Moreover, exposure to the Census Bureau's advertising had greater effect on the participation of blacks than of whites.

Finally, the authors used an unexpected opportunity, a competing message. Soon after the census began, conservative circles began to buzz with objections to the "invasion of privacy" of the census long form, mailed to one out of six households. Conservative leaders encouraged people to resist intrusion by skipping the objectionable questions. The authors quickly assembled a special study to assess the privacy debate, and they found that it affected not only return rates but also item response rates.

Still, the problem of self-exposure complicates the authors' conclusions. At the end, they show that the main influence on response was household composition: unrelated adults were far less likely to return the census than kinship households. Contrasting the effect of household structure and the irrelevance of civic engagement in explaining census response, they advise that future campaigns might emphasize the material rather than civic benefits of census response. This may be true, and it deserves further study, given the steady shift in household structure away from individuals related by kinship. But perhaps the importance of civic engagement was obscured by the very success of the campaign. If the census mobilization raised knowledge of the census for people who were unengaged but less for people who were already engaged and aware, it would have its effect by blunting the impact of civic engagement.

The Hard Count is rich in implications for both the practical business of the census and the understanding of the influence of communications on public attitudes and behavior. It should command the discipline's attention, and much more frequently than every ten years.

JOHN MARK HANSEN
University of Chicago

Reconstructing the Commercial Republic: Constitutional Design after Madison *by Stephen L. Elkin. Chicago, IL, University of Chicago Press, 2006. 416 pp. $35.00.*

This is a brief not only for a new kind of constitutional theory, but for a new American constitution. The small "c" is intentional, for Stephen Elkin's approach to constitutionalism is fundamentally Aristotelian. It is concerned with "the political-economic order as a whole, not just particular institutions and practices" (p. 3), with the "regime" rather than with the constitutional text. Plausibly enough, Elkin posits that the current aspirations of the American regime are for a "commercial republic" that combines "popular self-government, limited government, and active government" (p. 14). *Reconstructing the Com-*

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mercial Republic explores what would be necessary to best realize those commitments in the modern world. In Elkin's telling, constitutional design "after Madison" need not be hostile to Madisonian goals and purposes, but if it is to realize our constitutional aspirations, it must take into account political and economic developments that were not adequately anticipated and addressed by James Madison and his generation.

Broadly speaking, the book is driven by the question of how we can today do a better job of preventing the "factional" politics that Madison also hoped to avoid. How do we achieve a "politics of self-limitation," in which the power of the state is used to advance the public interest rather than the particular interests of some members of society (p. 72)? There are many virtues to this approach to constitutionalism. First, it focuses on what a good constitution is meant to *achieve*, and not just what it is meant to prevent. Constitutionalism does not merely set the outer bounds on state power, allowing a political free-for-all within those bounds; it is also concerned with the proper ends of politics and with organizing a state that can effectively pursue those ends. Second, it focuses on a political process and not simply on a set of preferred constitutional outcomes. A great deal of constitutional theory takes the form of elaborate briefs for favored results in possible Supreme Court cases, but Elkin is interested in how we can organize a form of politics that can secure and preserve a free and prosperous society. Third, it emphasizes the need to link the empirical with the normative. Constitutional theory is a practical enterprise, not in the sense that it is embedded in daily politics and offers advice to current policymakers, but in the sense that it aims to be realistic and to account for how a particular society actually works.

In practice, Elkin's constitutional vision betrays a certain nostalgia for the 1950s. He wants legislators who will be workhorses, not show horses. He wants political parties that are not polarized or ideological, and a minority party that is primarily concerned with making sure the majority party does not become corrupt or lazy. He wants a society dedicated to economic equality within a generally free market, and he wants a vibrant civil society dedicated to "increasing the public well-being" (p. 136). These are not unreasonable ambitions to have, and the "modest program" for reforming the American republic with which he concludes the book is serious and thoughtful. Given their familiarity, however, it would have been useful if Elkin had pursued the empirical question of what has led us to our current political state. The challenge for creating the politics that Elkin envisions is less in identifying the inadequacy of Madison's constitutional thinking than in identifying the political forces that have led us to our present situation and the opportunities hidden in the current political landscape for moving reform forward. *Reconstructing the Commercial Republic* is a thoughtful and challenging book, and hopefully it will inspire others to take up the project of constitutional preservation that it champions.

KEITH E. WHITTINGTON
Princeton University

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Age in the Welfare State *by Julia Lynch. New York, Cambridge University Press, 2006. 246 pp. $24.99.*

Adopting a path-dependent tack, Julia Lynch elaborates a historically well-grounded explanation of how the Netherlands and Italy have come to very different age orientations in their contemporary welfare states. More broadly, she explains why advanced industrial nations vary widely in their relative generosity to elderly versus younger populations. In advancing an account of how welfare state age orientations are largely functions of early twentieth-century institutional design choices and the resulting types of political competition, she argues that current social insurance systems represent largely unintended consequences of much earlier decisions. These hard-to-change policies and forms of political competition mutually reinforce one another to the point that attempts to understand the welfare state though a contemporary power perspective will almost certainly fail.

Beginning by observing that age orientation in the welfare state has been neglected, she begins to right past wrongs by offering an account based on Italy's relatively generous-to-the-elderly system of pensions and the more universal but shallow Dutch safety net. Italy, like the United States, extends relatively little help to the young while focusing instead on its senior citizens. The Netherlands exhibits a different pattern. This beginning observation gains its import from how it speaks to the lack of adaptability of nations' welfare programs in meeting changing demographics.

Across industrialized nations, aggregate measures of welfare generosity and comprehensiveness correlate poorly with indices of public assistance for the aged. Both the Dutch and the Italian cases fall into Gøsta Epsing-Andersen's "Conservative-Corporate" category (Gøsta Epsing-Andersen, *The Three Worlds of Welfare Capitalism*, Princeton, NJ: Princeton University Press, 1990, p. 27). Both countries had pure occupationalist systems prior to the Second World War. Both used commissions to examine future directions following the War. Both countries saw Christian-Democratic parties advance reform. But in the end, the Netherlands saw a youth-oriented, semi-universal program emerge, while Italy retained a much more occupationalist system.

At the founding, choices about clientelism versus universalism set in play modes of political competition that exerted powerful effects over the ensuing generations. In the case of clientelism, this fostered particularistic policies favoring the elderly. With universalism, very broad safety nets hindered the facile exchange of votes for targeted program benefits. Of particular import are forms of taxation. Universalistic taxes facilitate broadly spread benefits, and vice versa. The hard-to-change quality of policy develops owing to the political difficulty of shifting fiscal resources from traditional beneficiary groups to others that may have a thin history of paying taxes, such as children and young families. Hence, modes of political competition matter more than does the ideological complexion of politicians. In short, current policy is not due to current constituent demands but rather to the enduring force of "sticky

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institutions" that transmit incentives through time. This downplaying of a demand model of policy provision makes Lynch's explanation novel and provocative but also intuitively appealing.

Lynch presents a sufficiently rich narrative to convince, though the work also begs but leaves unanswered the question of why initial policy choices were made. Nor does she fully explore the possibilities for change. Pointing to a possible backlash by the Italian non-elderly, ripe in their resentfulness over disproportionate resources directed to retirees, she concludes by hinting that pressure bubbling up from below might overthrow the sticky institutions that have ossified over long periods. Of course, to argue this any more than she tentatively does would be to abandon her central thesis about self-reinforcing couplets of institutions and policies. To her credit, she raises this line of thinking only briefly. Taken as a whole, the work offers a fine account of policy development and rigidity and the substantial autonomy of policy from contemporary pressures in an era in which age is rising in importance for social welfare analysts.

GREG M. SHAW
Illinois Wesleyan University

Design for a New Europe *by John Gillingham. New York, Cambridge University Press, 2006. 298 pp. Cloth, $50.00; paper, $19.99.*

John Gillingham, expert on the European Union (EU) and a ferocious polemicist, argued in *European Integration, 1950-2003* (New York: Cambridge University Press, 2003) that if the EU had been useful in providing market-liberalizing support for the redevelopment of European societies after World War II, it began to go bad when its leaders fantasized about creating a European "superstate." As a result, the EU has been wrong-footed by globalization. *Design for a New Europe* continues this argument since 2003, but in this book, polemic predominates over expertise.

Gillingham, a Hayekian neo-liberal, thinks that it would be sensible, as his postscript suggests, to abolish a Common Agricultural Policy "dripping with sleaze," fire most employees of the European Commission, persuade EU member states to pay their budgetary dues or "press hard for an orderly winding down of operations," cut salaries of members of the European Parliament (EP) below market rates and have their expenses audited by a "senior cloakroom attendant," relocate the EP to Lake Balaton in deepest Hungary, and make Turkish and church Slavonic official EU languages. The EU should go into hibernation, he concludes.

Even readers who disagree with hard-line neo-liberalism will find interesting things in the book. The chapter on governance reviews the argument that the EU has been elite-built and that more democracy is desperately needed. It also contends that initiatives from the 1980s and 1990s, including common foreign and defense policy and economic and monetary union, have fallen short. The chapter on economics analyzes Europe's present stagnation, explores EU

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failures at services liberalization, criticizes EU approaches to research and development, and discusses "hard case" economies in France, Germany, and Italy. The chapter on innovation mocks EU reluctance to accept genetically modified foods and its "precautionary principle" as disguised protectionism, anti-Americanism, and a disaster for European high-tech. The chapter on democracy reviews EU budgetary failures, enlargement to Turkey (of which he fervently approves), and the Union's imperious attitudes toward potential new members.

Admirers of vivid language may find Gillingham's rhetoric amusing. Others will be offended by his gratuitous insults—Belgian Prime Minister Guy Verhofstadt is "the buck-toothed Flemish Francophile" (p. 12) and EU statesman Jean-Claude Juncker the "ludicrous Luxemburger" (p. 36), and there is endless French and German bashing. More important is whether Gillingham's story is convincing. One subtext—that Jacques Delors and other leftists, having failed at the national level, then sought to build socialism at the EU level—does not hold up. Delors was not much of a leftist, and much of the firepower behind his policies came from the center-right. More importantly, Gillingham's rush to blame the EU is misplaced. The EU may have made mistakes, but most of Europe's problems and inadequate responses to them have originated from key EU member states rather than the EU. Third, it is European citizens, and not primarily the EU, who hesitate to roll back their welfare states, worry about GMOs, and reject American foreign policy adventures. The most serious criticism of Gillingham, however, is that by demonizing the EU, he underplays dramatically the enormity of recent challenges to Europe more generally. Basic paradigms in economic policy have shifted completely, led by the United States, as globalization has rapidly advanced. European nation states were ill prepared for these unforeseen changes. These changes coincided with the abrupt and unpredicted end of the Cold War, which for decades had structured practically everything about Europe. Adjustment to both processes has brought huge tasks demanding time to accomplish. What drives Gillingham's book is the contention that today's Europe has had only one job to do, embracing neo-liberalism, and it has failed at this because of the EU. This is simple-minded and sectarian. Becoming neo-liberal has not been the only game for Europe and the Europeans, and the EU has been far from the only player.

GEORGE ROSS
Brandeis University

Territory, Authority, Rights: From Medieval to Global Assemblages *by Saskia Sassen. Princeton, NJ, Princeton University Press, 2006. 502 pp. $35.00.*

Although globalization has attracted much attention, few social scientists have probed systematically the complex process of change that is bringing globalization about or have placed it in historical perspective. In this magisterial work of enormous scope and penetrating analysis, Saskia Sassen attempts to do so.

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In her many works on the emerging global economy and society, Sassen stresses systemic perspectives to explain wide-ranging new developments, from corporate business, international finance, urban development, labor markets, and social polarization and cohesion, to the changing character of cities and nation-states. In this book, she expands that perspective considerably, looking for the dynamics of what she calls "foundational" changes (p. 6) in world systems. She examines patterns of social and economic development in three epochal periods: the Middle Ages; the era of the nation-state, beginning in the eighteenth century; and the global era that she believes began its formation after World War II and took definite shape in more recent decades. Using history as a laboratory, she probes how these systems emerged, matured, and then became disassembled over time.

How these earlier systems materialized and why denationalization is occurring in the current era is explained by relying on an analytical framework that stresses institutional development and deliberate political choices. Sassen takes issue with so-called world systems theorists and others who are inclined to view fundamental changes of international scope as a process in which the logic of a new system unfolds to eventually break down the barriers put in place by an older system. Instead, she argues that systemic change is messier than that. It arises from forces inside nation-states as well as from exogenous developments of global scale. She argues that three variables are central to complex systems: territory (boundaries), authority, and rights. Looking backward, Sassen describes how these concepts get defined and redefined at the national and global levels, eventually becoming part of new organizing logics among nations. From this perspective, major system changes are strongly driven by choices and events within nations; these eventually form building blocks for the emergence of new systems.

Given the tremendous scope and complexity of the analysis, it is difficult to briefly capture its many insights. After an introduction outlining the basic concepts and methods, part 1 of the book describes how the international system anchored in the nation-state evolved on a foundation of legal ideas and institutions derived from the Middle Ages as well as from innovations during the period of nation-state building. Part 2 forms the bulk of the book. It sketches out how the present global system is built on complex changes in national politics and a process of denationalization. Here she describes how American domestic and foreign policies were refashioned to lay many of the foundation stones that support globalization (that is, denationalization) of politics, trade, law, and even citizenship itself. For example, within the United States, she sees a decided shift of power from Congress to the executive as a response to the pressures of international competition. She also observes that the entire idea of citizen rights is now being transformed by the realities of new labor mobility, requiring national laws to accommodate the entry of new people with ambiguous political status. A final section looks at how digital networks in information technology, finance, and markets have been molded by highly contingent political forces, rather than just unfolding technologies.

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This book constitutes a major achievement, if only because of its ambitious attempt to capture and understand hundreds of years of complex politico-economic change. In addition, its many insightful observations about the de-nationalizing forces driving recent major shifts in power and public policy in the United States are impressive. Nevertheless, the book has some flaws. Better editing and clearer prose would have made this highly abstract and complicated work more accessible to readers. As it is, there are numerous excessively abstract and repetitive passages. The concepts of territory, authority, and rights provide a good organizing framework, but they sometimes seem rather distant from the analysis of specific changes. In particular, it is not clear why they lead the author to conclude that the national scale will continue to remain important in a globalizing world. Overall, however, this work will stand as the leading exploration of the subject for many years.

PAUL KANTOR
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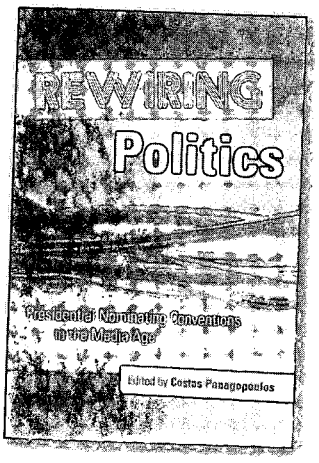

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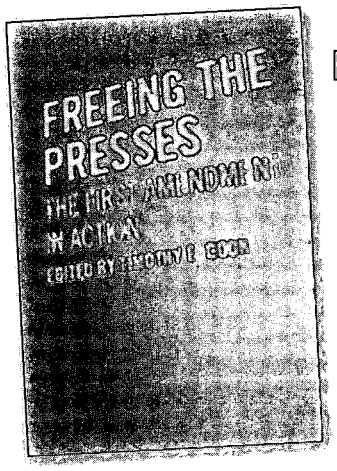

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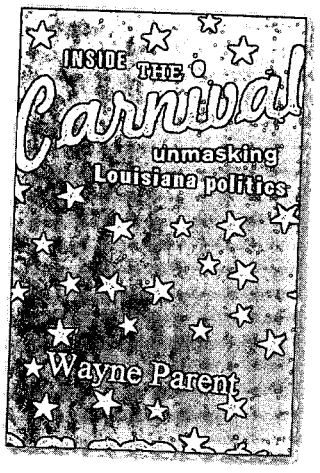

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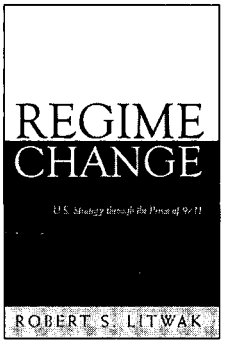

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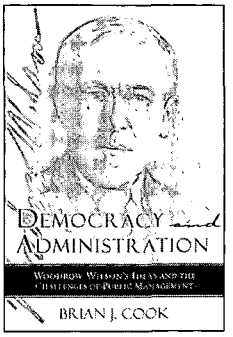

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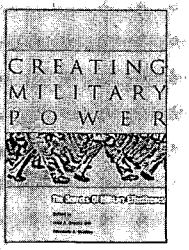

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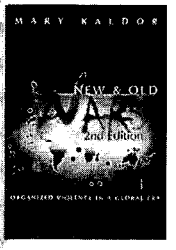

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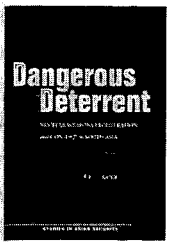

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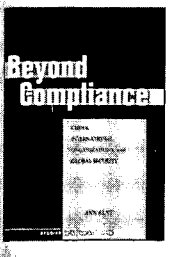

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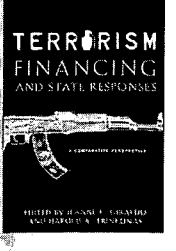

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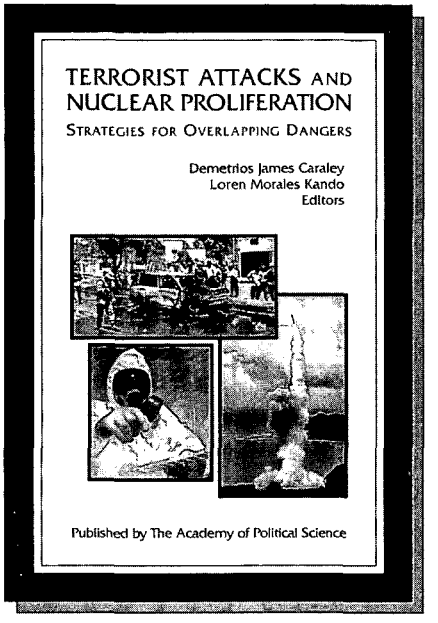

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In this issue . . .

Were the 2006 Congressional Elections a Referendum?

"The Democrats' efforts to nationalize the election and to make it a referendum on President Bush and the Republican Congress largely succeeded. . . . More than a third of the electorate said that their vote for Congress was a vote against Bush, a noticeably larger proportion than for any of his three predecessors at midterm, including Bill Clinton in 1994."

Gary C. Jacobson, University of California, San Diego

Anti-Terrorism vs. Anti-Proliferation

"The country that deserves the greatest attention today is Pakistan. Pakistan hosts a large domestic jihadist presence and significant numbers of foreign jihadists while possessing a nuclear weapons program that it has demonstrated it does not, or will not, control. The possibility of leakage is more than plausible, and the results could be catastrophic for the region and for the United States."

Daniel Byman, Georgetown University

The Supreme Court and Enemy Combatants

"*Hamdan* must be understood as having not all that much to do with individual rights, and everything to do with separation of powers. As both Justice Kennedy and Justice Breyer emphasized in their respective concurring opinions, if the President truly needed the powers he asserted in *Hamdan*, Congress could give them to him. And indeed, Congress did just that a few months later when it enacted the Military Commissions Act."

Michael C. Dorf, Columbia University

Religious Polarization in the American Electorate

"In today's rabidly partisan conflicts, the average, historically clueless American is whiplashed from both sides with reckless claims about American nationhood, Christianity, and political agendas. Religious and secular partisans alike have a vested interest in drowning out any sensible consideration of the subject. The resulting disinformation is an invitation to thoroughly benighted public debate."

Hugh Heclo, George Mason University

Are Religious Movements a Threat to Individual Freedoms?

"That we continue to view . . . marginal fundamentalists as representative of the Christian right as a whole prevents us from undertaking a thoughtful assessment of the right or understanding the complex relationship between Christianity and deliberation."

Jon A. Shields, Cornell University

The Constitutional Status of Puerto Rico

"A binding informal constitutional rule entrenches Puerto Rico's post-1952 constitutional order, providing real powers of domestic sovereignty to the territory. Consequently, the most accurate description of Puerto Rico is neither as a mere colony nor as a decentralized territory. Puerto Rico is a polity with a range of sovereign powers that is unincorporated into the domestic system of the core state it is associated with. The relationship between Puerto Rico and the United States can therefore be described as a 'federacy' arrangement."

David A. Rezvani, Harvard University

. . . and 31 book reviews

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